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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

General Assembly
Official Records • Forty-eighth Session
Supplement No. 33 (A/48/33)

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I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 47/38 of 25 November 1992 and met at the United Nations Headquarters from 1 to 19 March 1993. 1/

2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975 and decision 45/311 of 28 November 1990, the Special Committee was composed of the following member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Russian Federation, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia.

3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. Mr. Vladimir S. Kotliar, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Mr. Andronico O. Adede, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Special Committee and of its Working Group. Ms. Christiane Bourloyannis and Mr. Vladimir Rudnitsky, Legal Officers (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.

5. At its 167th meeting, on 1 March 1993, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ and taking into account the results of the pre-session consultations among its member States conducted by the Legal Counsel, elected the Bureau of the Special Committee, as follows:

Chairman: Mr. Erkki Kourula (Finland)

Vice Chairmen: Mr. Guillermo Camacho (Ecuador)
Mr. Faqir Hussain (Pakistan)
Mr. György Molnar (Hungary)

Rapporteur: Mrs. Alia Dlimi (Tunisia)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. At its 167th meeting, the Special Committee adopted the following agenda (A/AC.182/L.74):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 47/38 of 25 November 1992, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. In accordance with paragraph 5 of General Assembly resolution 47/38, the Special Committee, having received requests for observer status from 58 permanent missions to the United Nations (Armenia, Australia, Austria, Azerbaijan, Belarus, Benin, Bolivia, Botswana, Bulgaria, Cameroon, Canada, Cape Verde, the Central African Republic, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cuba, the Democratic People's Republic of Korea, Denmark, Ethiopia, Guatemala, Ireland, Jordan, Kazakhstan, Latvia, Lesotho, the Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Morocco, Namibia, the Netherlands, the Niger, Norway, Oman, Panama, Peru, Portugal, the Republic of Korea, the Republic of Moldova, Senegal, the Slovak Republic, Slovenia, the Solomon Islands, the Sudan, Suriname, Sweden, Thailand, Trinidad and Tobago, Ukraine, Uruguay, Vanuatu, Viet Nam and Zimbabwe), took note of those requests and accepted the participation of observers from those Member States.

9. At its 168th and 170th meetings, in accordance with paragraph 5 of General Assembly resolution 47/38, the Special Committee decided to invite intergovernmental organizations which had expressed an interest in participating in the plenary meetings of the Special Committee to attend those meetings during which the item on cooperation between the United Nations and regional organizations in the maintenance of international peace and security would be discussed. The following intergovernmental organizations were invited to participate at the 1993 session of the Committee: Asian-African Legal Consultative Committee, Organization of the Islamic Conference, Economic Cooperation Organization, Organization of American States, Conference on Security and Cooperation in Europe, European Community, Organization of African Unity, League of Arab States and South Pacific Forum. At the 170th meeting, the Special Committee decided, according to the said resolution, to extend an invitation to a representative of the Permanent Observer Mission of Switzerland to participate in the plenary meetings during which the proposal on the United Nations rules for the conciliation of disputes between States would be discussed.

10. At its 167th meeting, the Special Committee established a Working Group of the Whole and agreed on the following organization of work: two or three meetings would be devoted to organizational matters and to a general debate on all items concerning the mandate of the Committee; 14 or 15 meetings to the proposals relating to the maintenance of international peace and security that had been submitted to the Special Committee during its session in 1992, as well as those which might be submitted to it at its 1993 session; six or seven meetings to the question of the peaceful settlement of disputes between States; three meetings were reserved. It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking account of the progress achieved in the consideration of the items.

11. As to the question of the maintenance of international peace and security, the Special Committee had before it an updated working paper entitled "New issues for consideration in the Special Committee", submitted by the Russian Federation (A/AC.182/L.65/Rev.1) (see also para. 95); another proposal by the same delegation entitled "Draft Declaration on the Improvement of Cooperation between the United Nations and Regional Organizations" (A/AC.182/L.72/Rev.1) and the amendment thereto proposed by Mexico (A/AC.182/1993/CRP.4), as well as the proposal submitted by Bolivia, Bulgaria, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Malta, Mauritania, Mongolia, Mozambique,

Nicaragua, Panama, Paraguay, Republic of Moldova, Romania, Ukraine and Uruguay (see also paras. 97 and 98), entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter" (A/AC.182/L.76/Rev.1), and the working paper submitted by India and Nepal under the same title (A/AC.182/L.77). Under the same topic the Special Committee also had before it a "Revised proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security" (see para. 93), as well as a revised working paper submitted by Cuba, entitled "Strengthening of the role of the United Nations in the maintenance of international peace and security" (see para. 90). As to the topic of the peaceful settlement of disputes between States, the Special Committee had before it the proposal submitted by Guatemala, entitled "United Nations rules for the conciliation of disputes between States" (A/AC.182/L.75) (see para. 122).

II. GENERAL DEBATE

Statement of the Rapporteur

12. In accordance with the decision taken at its 167th meeting on the organization of its work, the Special Committee held a general debate at its 168th and 171st to 174th meetings, on 2, 5 and 8 March 1993.

13. All the delegations that participated in the general debate stressed the importance of the work of the Special Committee on the issues covered by its mandate at a time when the United Nations was faced with new challenges. They highlighted particularly the question of the cooperation between the United Nations and regional organizations in the maintenance of international peace and security, as well as the question of assistance to third States affected by the imposition of sanctions under Chapter VII of the Charter of the United Nations. It was observed that those issues had also been addressed by the Secretary-General in his report entitled "An Agenda for Peace" (A/47/277-S/24111). Reference was also made to other proposals, including the revised working paper submitted by Cuba.

14. Several representatives addressed the question of the enhancement of the effectiveness of the United Nations to enable it to respond successfully to the demands of a changing world. In this respect, some representatives expressed the view that, in order to achieve that goal, it was necessary to undertake a critical examination of the structures of the Organization, and possibly amend certain provisions of the Charter. In particular, it was observed that drawing too much on creative reinterpretations of the provisions of the Charter, instead of considering the possibility of amending certain provisions, if and when necessary, might lead to the weakening of the solid legal structure upon which the functioning of the United Nations was based. The possibility of convening, pursuant to Article 109 of the Charter, a General Conference to review the Charter, was mentioned in this connection. However, some representatives underlined the fact that the Charter was a living and evolving instrument, capable of meeting the emerging needs of the international community. In this respect, it was noted that the Charter, as drafted, has produced a coherent system and that it was a legal tool capable of permitting great progress in the cause of the maintenance of peace, provided that it was fully and effectively applied. It was also mentioned that there were other practical forms and methods of the adaptation of the Charter to changing circumstances, such as the adoption of General Assembly declarations and Security Council resolutions, the creation of new mechanisms and institutions, as well as the formulation of common "understandings" and "interpretations" with regard to Charter provisions. It was proposed that the Special Committee undertake a systematic legal review of the process of reform of the Organization in the areas of security and economic and social development, possibly on the occasion of the fiftieth anniversary of the United Nations.

15. The idea was strongly supported that the membership of the Security Council be increased. In this regard, the view was expressed that such a revision would ensure the representativeness and legitimacy of the Council, which was crucial at a time when its activities were rapidly expanding. It was observed that a limited increase in membership would not impair the Council's efficiency. The point was also made that the number of both permanent and non-permanent members should be increased, on the basis, particularly, of equitable geographical representation. A view was expressed that permanent members should be chosen, in thise respect, on the basis of objective criteria such as the gross national product and the overall contribution to the United Nations system. In this connection, there was the view that new permanent members should not necessarily

be granted the veto power. As far as the decision-making process of the Council is concerned, the point was made that the question of the veto power should be re-examined. A suggestion was made that the procedure of weighted voting might be introduced in the Council. Attention was drawn to the need for more transparency in the work of the Council and for a re-evaluation of the practice of the Security Council of holding informal consultations.

16. It was pointed out that the Security Council was finally functioning as intended by the founders of the Organization, and had achieved a proper balance between the need for a prompt and effective response on the one hand, and the need to reach a consensus for its actions on the other. In that connection, recent examples of the effectiveness of the Council were given. It was observed that the preservation of the newly found efficiency of the Security Council was of primary importance for the maintenance of international peace and security. The point was made that the Council was composed of Member States representing all regions. It was further observed that the veto had not been invoked since 31 March 1990, and that the Security Council was frequently adopting its decisions unanimously. The view was expressed that while the positive and frequently unanimous outcome of the many politically sensitive matters before the Council would not be attainable without the practice of informal consultations, all members of the Council did their best to keep other States informed of developments in that organ.

17. It was observed that the collective security system provided for under Chapter VII of the Charter should be fully implemented. It was further suggested that the Special Committee consider all aspects of the question and develop general and flexible guidelines which might be included in the text of a declaration. In this connection, it was proposed that the Special Committee consider the issue of more frequent recourse by the Security Council to enforcement measures to respond to threats to the peace, as well as to ensure respect for its decisions; ways and means for the effective enforcement of non-military measures; the possibility of using military means to enforce sanctions; the question of compliance by the Council with the proportionality principle when undertaking military action under Chapter VII; the definition and scope of humanitarian intervention; the question of provisional measures; and the implementation of Articles 42 and 43 of the Charter.

18. A number of delegations pointed out that the General Assembly should play a more active role in the maintenance of international peace and security, and that the relationship between that organ and the Security Council should be more balanced and cooperative. In this connection, the view was also expressed that the Security Council and the General Assembly should regularly inform each other of the items on their agenda. A full implementation of Article 15, paragraph 1, and Article 24, paragraph 3, of the Charter was called for in this regard. It was pointed out that the Security Council was politically accountable to the General Assembly, which ensured that the activities of the Council did not go beyond its mandate or conflict with certain provisions of the Charter, particularly Article 2, paragraph 7, thereof. It was further suggested that the possibility of a constitutional control of the acts of the Security Council, either through the International Court of Justice or under a procedure of appeal by Member States to the General Assembly by a qualified majority, should be envisaged.

19. The view was expressed that mechanisms for preventive diplomacy and the peaceful settlement of disputes should be strengthened. Attention was drawn to the important role of the Secretary-General in this regard. It was further suggested that the Special Committee elaborate a universal convention on the peaceful settlement of disputes.

20. The need to enhance the role of the International Court of Justice was stressed, and reference was made in this connection to the relevant proposals contained in the report of the Secretary-General entitled "An Agenda for Peace" (A/47/277-S/24111). The following ways of achieving that goal were mentioned: the increased acceptance of the compulsory jurisdiction of the Court, in particular by all permanent members of the Security Council; a more frequent recourse by the General Assembly and the Security Council to requests for advisory opinions of the Court; the referral to the Court of the legal components of political disputes; and authorizing the Secretary-General to request advisory opinions of the Court. However, doubts were also raised with respect to the latter proposal. The view was further expressed that, in a case such as that envisaged in Security Council resolution 808 (1993), it would be more appropriate to establish a special chamber of the International Court of Justice instead of an ad hoc tribunal. In this connection, it was proposed that the Special Committee consider the question of the establishment of the tribunal in question. The possibility of a limited enlargement of the composition of the International Court of Justice was also mentioned.

21. Other proposals regarding amendments to the Charter included a call for the deletion of the "enemy-State" clauses and the increase in the membership of the Economic and Social Council.

22. Concerning the composition of the Special Committee, it was suggested that its membership be expanded in the light of the increasingly large number of observers who attended its meetings.

23. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman of the Special Committee, Mr. Erkki Kourula, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work. The Committee also expressed its appreciation to Mr. Vladimir Kotliar, who had informed it of his pending departure from New York, and thanked him for the contribution he had made to the accomplishments of the work of the Committee during the five sessions at which he served as a Secretary.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

24. In accordance with the decision taken at its 167th meeting, the Special Committee considered the question of the maintenance of international peace and security at its 173rd to 180th plenary meetings and at the 9th to 20th meetings of its Working Group.

A. Consideration of the draft document on the improvement of the cooperation between the United Nations and regional organizations

1. General exchange of views on the question of the cooperation between the United Nations and regional organizations in the maintenance of international peace and security

25. At its 173rd to 176th plenary meetings, the Special Committee had a general exchange of views on the question of cooperation between the United Nations and regional organizations. In accordance with the decision taken at its 168th and 170th meetings, the Special Committee had invited representatives from a number of intergovernmental organizations to participate in such plenary meetings. 3/

26. Several delegations of the Member States which made general comments on the topic considered the discussion to be very timely in the light of recent developments in various regions. However, some delegations expressed the view that further background information concerning the relationship between the United Nations and regional organizations would assist the Committee in its consideration of the topic. The relevant paragraphs of the report of the Secretary-General, entitled "An Agenda for Peace" (A/47/277-S/24111), and the statement of the President of the Security Council of 26 February 1993 (S/25344), were also considered a useful framework for discussion of the draft document submitted on this topic. At a time of growing demands on the United Nations, regional organizations had an important role to play in the maintenance of international peace and security. It was observed that the relation between the United Nations and regional organizations should be one of complementarity. It was further observed that cooperation between the United Nations and regional organizations in the maintenance of international peace and security should be in accordance with the provisions of the Charter, including the principles of sovereign equality and non-interference in the internal affairs of States. The point was made that it was necessary to define practical modalities whereby cooperation between regional organizations would be enhanced. The view was expressed that such modalities should be applied in a flexible manner, given the diversity of existing regional organizations. The point was also made that States had no legal obligations to establish regional organizations.

27. Representatives of intergovernmental organizations highlighted the achievements of their respective organizations in the area of the maintenance of peace and security and described situations where those organizations had cooperated with the United Nations. The point was made that the coordination of the efforts of regional organizations with those of the United Nations would ensure the most effective response to a potential or actual threat to international peace and security. The view was expressed, in this connection, that the fact that regional organizations were dealing with a situation should not necessarily imply that the situation in question could not be addressed by the United Nations. It was observed that a rigid formula for the cooperation between the United Nations and regional organizations was inappropriate, since

regions and regional organizations were very different. In this respect, the point was made that such cooperation could be best achieved through agreements in which the objectives, modalities and limits of such cooperation were clearly defined so as to ensure the autonomy of the regional organizations which must be respected. It was further stressed that it was not up to the United Nations to indicate to regional organizations what tasks they should undertake, since that could only be decided by States members of regional organizations. It was observed that the question of cooperation between the United Nations and regional organizations should be approached not only from the perspective of the contribution of regional organizations to the work of the United Nations, but also from the point of view of the assistance which the United Nations could provide to regional organizations, such as logistic and technical support for fact-finding missions.

2. Introduction of the draft document by the sponsor

28. At its 9th meeting, the Working Group began its consideration of a revised version of a draft declaration (A/AC.182/L.72/Rev.1), originally submitted by the Russian Federation at the 1992 session of the Special Committee, which read as follows:

"The General Assembly,

"Referring to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field and the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, and also to their provisions concerning the activities of regional organizations,

"Considering the great importance of the role of regional arrangements and organizations and the urgent need to utilize regional organizations in order to solve acute problems of economic and social development, carry out preventive functions and maintain, establish and strengthen peace,

"Noting that the challenges to international peace and security at the new stage in international relations require recognition of the need to coordinate the efforts of regional arrangements and organizations with the efforts of the United Nations in the maintenance of international peace and security,

"Confirming that, according to the Charter of the United Nations, the basic task of regional organizations is that of dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such regional organizations and their activities are consistent with the Purposes and Principles of the United Nations,

"Recognizing that, in view of the differences in the legal and political status of regional organizations, the forms of their interaction with the United Nations should, as much as possible, be flexible and suited to the needs arising in each specific situation,

"Emphasizing that, in preserving the primary responsibility of the Security Council for the maintenance of international peace and security, regional action in terms of decentralization and cooperation with the United Nations might not only lighten the burden borne by the Organization but also promote the strengthening of the principles of joint participation, partnership and democracy in international affairs,

"Recognizing that full utilization and further improvement of the structures and mechanisms of regional organizations, their regular consultations with the United Nations and their direct participation in complementary efforts together with the Organization in the framework of joint undertakings could help to strengthen the role of the United Nations in the maintenance of international peace and security and promote the prevention and removal of threats to the peace, the peaceful settlement of disputes and the formation of an international consensus concerning the nature of a given problem and the measures necessary to solve it,

"Considering that measures to establish and improve regional security systems, taking into account the distinctive characteristics of individual regions and the new circumstances prevailing, should go hand in hand with efforts by the entire international community to bring about collective security in accordance with the Charter of the United Nations and to create a new world order in which the Organization's strategic role is ensured,

"Taking into account the fact that the broadening of cooperation by regional organizations with the United Nations in the fields of economics, science and technology, and environmental protection is important in order to strengthen security and stability in various parts of the world,

"Endeavouring to promote awareness among States of the role that regional organizations and their mechanisms can play in taking steps to influence a State with a view to ensuring the defence of human rights, democracy and the supremacy of the law in the event of massive and systematic infringements by the State concerned of its obligations in these fields,

"Considering the experience gained and the favourable results achieved by regional and subregional organizations in the peaceful and just settlement of disputes, situations and conflicts in different parts of the world,

"Recognizing the need for States, in exercising their sovereignty, to cooperate with relevant regional organizations in creating conditions conducive to predictability, concord, mutual understanding and stability in individual regions and throughout the world,

"Solemnly declares that:

"1. Regional agencies and arrangements should develop and deepen cooperation and interaction with the General Assembly, the Security Council, the Economic and Social Council and also the Secretary-General in the spirit of Chapter VIII of the Charter of the United Nations, inter alia, through the establishment of contact groups and working groups on questions of common interest, direct participation in discussing and solving problems relating to the social and economic development of regions, the provision of economic, technical and humanitarian assistance and also by promoting peacemaking efforts undertaken at the global and regional levels.

"2. Regional agencies and arrangements should, in assisting the United Nations where necessary, endeavour to establish and expand all-round links and contacts with other regional and subregional organizations in order to broaden political, economic, scientific and technical, humanitarian, ecological, cultural and other cooperation and establish conditions of peace and stability in the regions.

"3. In accordance with their obligations under the Charter of the United Nations, States should seek to establish functionally and structurally balanced regional organizations capable of taking effective action for the prevention and the durable and peaceful settlement of disputes and conflicts, also within States at their request, the strengthening of trust, mutual understanding and agreement among them; the promotion of arms control and disarmament verification; and the enhancement of cooperation among States.

"4. Regional arrangements and organizations should, within their spheres of competence, give due consideration to ways and means of strengthening their functions in the maintenance of peace and security with account taken of the distinctive characteristics of the relevant regions and in accordance with the Charter of the United Nations and, in particular, to the problems of preventive diplomacy, including fact-finding, confidence-building, the provision of good offices and peace-building, and also, where appropriate, peace-keeping.

"5. Regional agencies and arrangements should bear their share of the responsibility for maintaining international peace and security and conducting peacemaking activities in cooperation with the United Nations. In this regard, it is desirable for them to establish their own procedures for the peaceful settlement of disputes through negotiations, inquiries, mediation, conciliation, good offices, judicial inquiry and arbitration, and also through the assignment to permanent bodies within regional organizations, to that end, of relevant specific functions.

"6. The settlement of disputes with the assistance of regional organs or arrangements should be based on the consistent choice of these specific means by the parties to a local conflict and should seek primarily to apply the procedures for the settlement of disputes established in a specific regional document and only when it proves impossible to resolve the dispute, to resort to the means and mechanisms established within the United Nations.

"7. Regional arrangements and organizations should strive to ensure that the modalities of their cooperation with the United Nations are flexible and suited to each individual situation. This involves, in particular, exchanging information and holding consultations in order to strengthen the potential of the United Nations, including its potential in the area of monitoring and early warning, with the participation of the Secretary-General or, where appropriate, of his Special Representative; participating in an observer capacity in the sessions and work of the General Assembly; seconding officials to the United Nations Secretariat; submitting timely and specific requests for the United Nations to take appropriate measures; and being willing to provide the necessary resources.

"8. States participating in regional organizations should make every effort to effect a peaceful settlement of local disputes with the help of the regional organizations before referring such disputes to the Security Council.

"9. States should seek to establish and improve preventive peacemaking mechanisms in the field of peaceful settlement of disputes and conflicts in accordance with the Charter of the United Nations.

"10. States should pay appropriate attention to the establishment and improvement within regional organizations of an extensive network of mechanisms and institutes for the timely compilation, analysis and processing of full and objective information on the relevant facts relating to any dispute or conflict that is developing or has arisen; and should coordinate that network with the work of the Security Council and the Secretary-General in this area.

"11. States should consider the possibility of strengthening the preventive functions of regional organizations and of establishing for this purpose procedures and mechanisms capable of identifying and detecting regional disputes and situations at an early stage in their development and taking appropriate measures to prevent their escalation or transformation into military confrontations, and also to ensure close coordination with the preventive efforts of the United Nations.

"12. Taking into account the practice of the United Nations and in coordination with the Security Council, regional organizations should consider the possibility of setting up, training and using, within the framework of regional organizations, groups of military and civilian observers, contingents of regional peacemaking forces, police units and civilian experts for the purposes of fact-finding, separating the forces of the antagonists, providing humanitarian and emergency assistance, monitoring compliance with cease-fire and truce agreements and with agreements on disarmament of the antagonists, and maintaining law and order in the event of the outbreak of disorder and confrontations on ethnic, national or religious grounds between States and within countries, at their request or with their agreement.

"13. States should seek to agree on and adopt, within the framework of regional organizations, methods to strengthen security, build confidence and limit the level of military confrontation in the region.

"14. States should consider the possibility of acceding to all treaties establishing an international legal regime in the field of non-proliferation of weapons of mass destruction, and above all to the Treaty on the Non-Proliferation of Nuclear Weapons; and regional organizations themselves should prevent the proliferation of nuclear weapons.

"15. States, within the framework of regional organizations, should promote the development of regional arrangements and agreements on the banning of nuclear tests and of attacks on nuclear facilities and in this respect, acting in good faith, they should enter into negotiations for a ban on nuclear testing.

"16. The Security Council, taking into account the varying mandates, spheres of operation and composition of regional arrangements and organizations, should encourage and, where appropriate, support such regional efforts as are undertaken under regional arrangements and by regional organizations within their respective spheres of competence in accordance with the Purposes and Principles of the Charter of the United Nations.

"17. The Security Council should encourage the development of the application of peaceful settlement of local disputes with the assistance of regional organizations either on the initiative of the States concerned or on its own initiative.

"18. Dispute settlement by States participating in regional organizations with the assistance of such organizations shall not affect the authority of the Security Council to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in accordance with Article 34 of the Charter of the United Nations, or the right of any Member of the United Nations, in accordance with Article 35 of the Charter, to bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

"19. The Security Council shall, where appropriate, make use of regional agreements or agencies for enforcement action under its guidance, but no enforcement action may be undertaken under regional arrangements or by regional agencies without authorization from the Security Council.

"20. The Security Council shall always be fully informed of action taken or envisaged under regional arrangements or by regional agencies for the maintenance of international peace and security.

"21. States should strengthen cooperation between the United Nations and regional organizations and should promote such cooperation by holding talks and consultations, improving the forms and methods of interaction, developing coordinated programmes and agreements and carrying out concerted action in a wide variety of spheres of human activity in order to further the socio-economic progress of peoples and enhance the level of well-being and prosperity.

"22. The Secretary-General of the United Nations and the leaders of regional organizations should meet, when the need arises, to exchange information relating to local disputes and situations which may endanger international peace and security, propose joint initiatives in accordance with the provisions of the Charter of the United Nations for the purpose of settling local disputes, and also consider specific problems of the political, economic, social and cultural development of the countries in the region concerned.

"23. States should actively cooperate at the regional level in combating organized crime, illicit drug trafficking, international terrorism and crimes against the safety of civil aviation and maritime navigation.

"24. Regional organizations should assist the countries of their respective regions, at their request, in strengthening their security in accordance with the Purposes and Principles of the Charter.

"25. Regional organizations may request the Security Council to provide guarantees of regional security.

"26. Regional organizations should consider the possibility of taking steps in coordination with the United Nations, at the request of States, with a view to promoting the political, economic and social progress of the peoples of the region and the development of democratic processes in all the States of the region, helping to strengthen guarantees of human rights and the rights of national minorities, and including the regions within the

sphere of application of future measures to build confidence and promote openness.

"27. States should encourage regional organizations to make a greater practical contribution to eliminating hunger, illiteracy, poverty, violence, destruction, disease, political lawlessness, social alienation, economic backwardness and the adverse consequences of natural disasters and environmental accidents.

"28. Regional organizations should deal, along with issues of the peaceful settlement of disputes and the maintenance of international peace and security in the respective regions, with the political, economic, environmental and humanitarian aspects of security."

29. In introducing the draft document, the sponsor observed that the current challenges to international peace and security had highlighted the need for the full use of Chapter VIII of the Charter. He noted that regional organizations were an integral part of the collective security system of the Charter and stressed the fact that they were increasingly addressing issues relating to international peace and security. The sponsor expressed the view that the draft document would be a concrete contribution towards the strengthening of cooperation between the United Nations and regional organizations. He made the point that the revised draft document took into account the comments made during the discussion of the previous version at the last session of the Special Committee, as well as the relevant proposals of "An Agenda for Peace" and the ensuing discussion thereof. The sponsor noted that the provisions of the draft document were in full conformity with the provisions of the Charter.

3. General comments on the draft document

30. Delegations expressed their appreciation to the Russian Federation for the submission of the revised draft document. It was agreed that the consideration of the draft document by the Special Committee was without prejudice to its final form or to the outcome of the discussion.

31. The view was expressed that, before embarking upon the consideration of the draft document, the Special Committee should assess the existing level of cooperation between the United Nations and regional organizations and the need for the enhancement of such cooperation in various areas. Doubts were raised as to the appropriateness of elaborating a draft declaration on this topic. It was therefore suggested that a study of past and current cooperation between the United Nations and regional organizations be undertaken, together with an analysis of practical issues based on the experience of cooperation shown by such a study. The proposal was made to amend the title of the draft working paper to read: "Draft document on aspects of the cooperation between the United Nations and regional organizations". Although the proposal was not adopted, it was agreed to refer to the working paper in the report as a draft document.

32. It was observed that the scope of the draft document was not defined in a precise manner, and that it should be limited to the maintenance of international peace and security. The point was made that, in spite of its title, the draft document did not focus sufficiently on the question of cooperation between the United Nations and regional organizations. The view was expressed that the language used in most of the provisions of the draft was too imperative, and gave the impression that regional organizations were being instructed to undertake certain activities. In this connection, it was stressed that regional organizations were autonomous organizations established by sovereign States and that the constitutional instruments of the organizations

had to be fully respected. There was the view that the draft document should not focus on the establishment of new regional organizations or on the transformation of the existing organizations. The enhancement of the cooperation between the United Nations and regional organizations, it was observed, need not entail the creation of new structures. The point was made that, when considering this question, the Special Committee should not concentrate exclusively on Chapter VIII of the Charter, but should also take into account Chapters VI and VII thereof. It was observed that the draft document should refer to the role of the General Assembly in the maintenance of international peace and security.

4. Paragraph-by-paragraph consideration of the draft document

33. With respect to the first preambular paragraph, the point was made that it should also mention the 1982 Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex).

34. Concerning the second preambular paragraph, the point was made that the scope of the document should be the maintenance of international peace and security. In this connection it was observed that, although the problems of economic and social development had indeed a bearing upon the maintenance of international peace and security, they should not be made the focus of the paragraph. It was pointed out that a broad definition of the concept of the maintenance of international peace and security encompassed humanitarian and human rights issues as well. There was also the view that the term should be interpreted in a narrower sense. Noting the divergent interpretations given to it, the suggestion was made that the concept of the maintenance of international peace and security needed to be clearly defined. In that connection, reference was made, for example, to the definition of the concept contained in General Assembly resolution 47/120 of 18 December 1992. It was suggested that the second preambular paragraph make only a short reference to the maintenance of international peace and security, and that this concept be further dealt with more specifically in a third preambular paragraph. The point was made that the second and third preambular paragraphs should be merged. There was also the view that the second preambular paragraph should be deleted and that the language contained in the third preambular paragraph would serve to define the scope of the draft document.

35. Doubts were raised with regard to the use of the phrase "solve acute problems" in the second preambular paragraph. The suggestion was made that the phrase "to utilize regional organizations" should be replaced by the expression "to improve the cooperation between the United Nations and regional organizations" or "to ensure the cooperation between the United Nations and regional organizations". Another suggestion was to redraft the paragraph so as to read: "Considering the great importance of the role of regional arrangements and organizations and the urgent need to improve the cooperation between the United Nations and such organizations in the field of the maintenance of international peace and security". A further proposal for the redrafting of the paragraph was as follows: "Considering the useful role that regional agencies and organizations can play in enhancing cooperation among States in the economic and social fields and in the promotion of peace and security in their respective regions". It was further suggested, in this connection, to replace the term "regions" by the term "competences". Yet another proposal was to redraft the paragraph to read: "Considering the desirability of coordinating activities of regional arrangements and organizations with the activities of the United Nations for the maintenance of international peace and security". The proposal was made to delete the phrase "carry out preventive functions and maintain, establish and strengthen peace". Doubts were expressed, however, in regard to this proposal. Clarification was sought as to the precise scope of the term

"regional organization" as used in the draft document, and the point was made that some of the terminologies used therein needed to be harmonized.

36. In his reply, the sponsor observed that a broad definition of the concept of the maintenance of international peace and security took into account current realities. He further noted that the term "organization", as used in the draft document, was meant to cover a wide range of associations of States.

37. With regard to the third preambular paragraph, it was suggested that the term "challenges" be replaced by "threats" and that the term "need" be replaced by the term "usefulness". Doubts were also expressed as to the use of the expression "coordinate" in relation to the efforts of regional arrangements.

38. As to the fourth preambular paragraph, it was observed that the maintenance of international peace and security was not the basic task of all regional organizations. The proposal was therefore made to replace the phrase "Confirming that, according to the Charter of the United Nations, the basic task of regional organizations is that of" with the phrase "Considering that regional organizations can have an important role in". It was further suggested that the paragraph, as thus amended, should replace the second and third preambular paragraphs. It was proposed to redraft the existing fourth preambular paragraph to read: "Recognizing the important role of regional arrangements or agencies under Articles 52 and 53 of the Charter". Another proposal was to delete the paragraph, and to include the idea that regional organizations may contribute to the maintenance of international peace and security in another paragraph.

39. Concerning the fifth preambular paragraph, it was observed that the idea contained therein was very important. Doubts were raised, however, with regard to the expression "legal and political status of regional organizations". A proposal was made to replace it with the phrase "constitutional legal and political functions of regional organizations". Clarification was sought as to who would determine the flexible nature of the interaction between the United Nations and regional organizations. It was suggested that the paragraph be redrafted to read: "Recognizing that the forms of cooperation between regional organizations and the United Nations should be flexible and suited to the needs of each specific situation". Another proposal was to replace the paragraph with the phrase "Taking note of the various levels of development of different regional organizations". It was suggested that the paragraph include a reference to the need for respect of the constitution of each regional organization, and to the purposes and principles of the Charter.

40. With regard to the sixth preambular paragraph, the view was expressed that the paragraph should more faithfully reproduce the provisions of Articles 24 and 53 of the Charter. In this connection, it was suggested that the fact that the Security Council was primarily responsible for the maintenance of international peace and security should be mentioned in another paragraph. The view was expressed that the principles of joint participation, partnership and democracy used in the paragraph were not generally accepted legal principles and that they should be deleted. Another suggestion was to delete the phrase "of the principles of". Support was expressed, however, for the inclusion of those concepts in the paragraph. It was pointed out, in support of retention, that the paragraph contained language close to that found in paragraph 64 of "An Agenda for Peace". There were also doubts raised with regard to the term "preserving", and it was suggested that it be replaced by the term "reaffirming". The point was made that the term "decentralization" gave the wrong impression that regional organizations were subordinate to the United Nations. Doubts were also raised with respect to the phrase "lighten the burden", and it was suggested that the term be replaced by the phrase "share the burden". In this connection, the point was made that regional organizations and

the United Nations should, however, not share the financial burden of the maintenance of international peace and security. The deletion of the paragraph as a whole was also proposed.

41. In his reply, the sponsor observed that the translation did not apparently reflect faithfully the language of the original. He therefore pointed out that the aim of the paragraph was to highlight the fact that regional organizations also had a role to play in the maintenance of international peace and security, so that the Security Council need not deal with every single aspect of the issue. He noted that the term "decentralization" had repeatedly been used by the Secretary-General. He expressed the view that, while the principles mentioned in the paragraph were not of a legal nature, they had been included in several legal documents.

42. With regard to the seventh preambular paragraph, the point was made that too many concepts were included therein. It was observed that a practical listing of the existing forms of cooperation between the United Nations and regional organizations would be useful, but that the paragraph did not achieve that purpose. It was noted that the paragraph contained language similar to that contained in paragraph 65 of "An Agenda for Peace". Clarification was sought as to the meaning of the phrase "the formation of an international consensus concerning the nature of a given problem and the measures necessary to solve it". It was further suggested that the phrase in question be deleted. The proposal was made to delete also the phrase "further improvement". Clarification was sought as to the meaning of the expression "regular consultations". The suggestion was made to replace the term "role" with the term "capacity". There was also the proposal to delete the rest of the paragraph after the phrase "in the maintenance of international peace and security".

43. Concerning the eighth preambular paragraph, clarification was sought as to the meaning of the phrase "and to create a new world order in which the Organization's strategic role is ensured", and it was further suggested to delete it. In that connection, the question was raised whether in the English version of the draft document the term "legal" should be before the term "world order", as was the case in other languages. Clarification was also sought with regard to the term "regional security systems". Doubts were also raised with respect to the expression "new circumstances prevailing". There was also the suggestion to delete the word "new" from the expression in question. The deletion of the phrase "to establish" used at the beginning of the paragraph was suggested. There was also the suggestion that the paragraph as a whole be deleted.

44. In his reply, the sponsor clarified that the term "regional security systems" meant "regional organizations". He observed that the phrase "new legal order" was preferable to a phrase such as "post-confrontational period". He noted that the paragraph was intended to reflect the current reality of international relations.

45. With respect to the ninth preambular paragraph, the point was made that by mentioning economics, science and technology and environmental protection, all of which had only an indirect connection with the question of the maintenance of international peace and security, the paragraph went beyond the scope of the draft document, and should therefore be deleted. But there was also the view that the issues referred to in the paragraph were, in certain cases, relevant to the maintenance of international peace and security. It was further pointed out that the concept of economic development as such had a direct relation to the maintenance of international peace and security, and should therefore be mentioned in the paragraph. The suggestion was also made that the paragraph

should include reference to the question of human rights, as well as humanitarian issues. It was further proposed that a reference to the cooperation in the field of disarmament be added to the paragraph. There was also the suggestion to redraft the whole paragraph to read: "Taking into account the fact that the cooperation between regional organizations and the United Nations must extend to the fields of economics, science and technology, and environmental protection with a view to strengthening security and stability in various parts of the world". The proposal was made to include the expression "various organs of" before "the United Nations" and to insert the word "peace" before the term "security", in the proposed text for the whole paragraph.

46. In his reply, the sponsor observed that the areas mentioned in the paragraph were related to the maintenance of international peace and security.

47. Regarding the tenth preambular paragraph, the point was made that massive violations of human rights could constitute a threat to international peace and security. It was also noted that regional organizations were playing an effective role in the removal of such threats and in the promotion of human rights and democracy, and that cooperation with the United Nations in this respect would further contribute to that goal. There was, however, the view that, while the concepts mentioned in the paragraph were important, they were outside the scope of the draft document. In this connection, it was pointed out that the issue of human rights had already been dealt with by the competent United Nations organs. It was observed that defining an issue as one dealing with matters of security had the effect of bringing the issue in question within the competence of the Security Council. The view was expressed that the paragraph raised questions with respect to the principle of State sovereignty. The proposal was made to include in the paragraph the concept of fundamental freedoms and the right to self-determination. Doubts were expressed, however, about the appropriateness of such a proposal. The suggestion was made to replace the phrase "to influence a State with a view to ensuring the defence of" with the phrase "to convince a State to guarantee". There was a proposal to redraft the paragraph as a whole to read:

> "Recognizing that massive and systematic infringements by States on human rights, democracy and the rule of law may threaten international peace and security, and, in this connection, recalling the role that regional organizations and their mechanisms can play in promoting and encouraging respect for human rights, democracy and the rule of law,"

It was also proposed that the ninth and tenth preambular paragraphs be merged.

48. As to the eleventh preambular paragraph, doubts were raised with respect to the use of the word "just" in relation to the word "settlement", and it was suggested that it be deleted. The point was made that, while the Charter made reference to the principle of justice with regard to the settlement of disputes, the phrase "peaceful settlement of disputes" without reference to the term "just" was the generally accepted expression in this regard. It was alternatively suggested that the exact language of Article 1, paragraph 1, of the Charter be used. There was also the proposal to delete the term "subregional", on the understanding that the term "regional organizations", throughout the text, included subregional organizations. It was further suggested that the phrase "favourable results achieved" be deleted.

49. In his reply, the sponsor observed that Article 2, paragraph 3, of the Charter also made reference to the principle of justice, and that the language of the preambular paragraph thus conformed to the Charter.

50. With respect to the twelfth preambular paragraph, the view was expressed that it was too prescriptive and should therefore be deleted. There was also the proposal to redraft the paragraph in more general terms as follows: "Recognizing the usefulness of the cooperation between States and regional organizations".

51. There was a proposal by the Mexican delegation to include the following three paragraphs in the preamble (A/AC.182/1993/CRP.4):

> "Recognizing that the evolving nature of cooperation between the United Nations and regional arrangements and organizations makes it appropriate to take into account the fullest information and the valid judgements and opinions of the main agents of such cooperation,
>
> "Emphasizing that cooperation between the United Nations and regional arrangements and organizations must conform strictly to the provisions of the Charter, particularly Chapter VIII,
>
> "Underscoring further that respect for the principles of the sovereignty, territorial integrity and political independence of States is crucial in any common undertaking aimed at promoting international peace and security".

52. Concerning the proposed amendments, the point was made that the language of the first preambular paragraph was too vague. In that connection it was suggested that the phrase "valid judgements and opinions" be replaced by the word "views" and that the word "fullest" be deleted. The view was expressed that the second proposed paragraph should indeed be placed in the draft document. In that connection it was observed that a savings clause should also be included in the draft document. The proposal was made to delete the word "strictly" from the second preambular paragraph. It was pointed out that it was necessary to clarify that the cooperation in question was in the field of the maintenance of international peace and security. Support was expressed for the inclusion of the third proposed paragraph in the draft. The view was expressed that the language of the paragraph should be brought in line with Article 2 of the Charter. It was suggested that the paragraph be redrafted to read: "Underscoring further the importance of the respect for sovereign equality, territorial integrity and political independence of States".

53. As to operative paragraph 1 of the draft document submitted by the Russian Federation, the view was expressed that it seemed to be outside the scope of the draft document, which was the maintenance of international peace and security, and should therefore be deleted. It was added that the elements contained in the paragraph, inasmuch as they were relevant to the maintenance of international peace and security, could be mentioned elsewhere in the draft. It was observed that the paragraph was too detailed as to the forms of cooperation envisaged, and a question was raised with respect to the use of the term "interaction". The suggestion was made to replace the phrase "regional agencies and arrangements should" with "regional agencies and arrangements and the United Nations shall cooperate". It was proposed that the phrase "is/are invited to" be used instead of the term "should" throughout the text. The point was made that the term "in the spirit of" should be replaced by "in accordance with". There was a suggestion to add after the term "regions", the phrase "as well as greater coordination regarding the implementation of universally accepted standards of human rights". It was proposed that the paragraph be redrafted to read:

> "Regional agencies and arrangements are invited to develop and deepen their cooperation with the General Assembly, the Security Council, the

Economic and Social Council, the International Court of Justice and also the Secretary-General, in accordance with Chapter VIII of the Charter of the United Nations, inter alia, through the establishment of contact groups and working groups on questions of common interest within their purview."

It was observed that the paragraph should be brought in line with paragraph 2. There was also the proposal to merge the two paragraphs.

54. In his reply, the sponsor observed that the term "interaction" referred to mutual cooperation between the United Nations and regional organizations. He expressed the view that it was necessary to specify what forms the cooperation between the United Nations and regional organizations could take. He further noted that the International Court of Justice had not been mentioned in the draft, because the scope of its cooperation with regional organizations could only be very limited.

55. Concerning operative paragraph 2, it was observed that the cooperation among regional organizations was outside the scope of the draft document. There was, however, also the view that this issue should be included in the draft, albeit in a simplified form. The suggestion was made to delete the phrase "in assisting the United Nations where necessary". Another proposal was to delete the terms "economic", "scientific", "ecological" and "cultural".

56. In reply, the sponsor observed that the intention of the paragraph was merely to express the desirability of cooperation among regional organizations.

57. Regarding operative paragraph 3, the point was made that States were under no legal obligation to establish regional organizations. It was further observed that the United Nations could not give directives to regional organizations as to their mandate. It was therefore suggested that the paragraph be deleted. Doubts were expressed with respect to the phrase "also within States at their request", and it was suggested that it be deleted or qualified by the expression "in strict accordance with its constitutional procedures". The proposal was made to delete the phrase "the promotion of arms control and disarmament verification" since it dealt with global issues outside the scope of the draft document. It was suggested that the paragraph be redrafted to read as follows:

> "States should be encouraged to use regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security and the peaceful settlement of disputes, provided that such arrangements or agencies and their activities are consistent with the Charter of the United Nations."

Another proposal was to redraft the paragraph as follows:

> "States are invited to consider the desirability of taking such steps as may be practicable to develop enhanced regional capacities to assist in the resolution of shared problems in the field of international peace and security."

58. In reply, the sponsor observed that the intention had not been to create a legal obligation on States to establish regional organizations, but rather to encourage the improvement of the functioning of such organizations.

59. As to operative paragraph 4, the view was expressed that it was indeed important and that it should be placed earlier in the draft. The suggestion was made to redraft the paragraph by replacing the phrase "regional arrangements and organizations should" with the phrase "regional arrangements and organizations

are invited, in accordance with Chapter VIII" and by deleting the phrase "and also, where appropriate, peace-keeping". There was the proposal either to delete the term "fact-finding" or to add to it the phrase "with the consent of the State concerned".

60. With regard to operative paragraph 5, the proposal was made to delete the beginning of the paragraph up to the term "to establish" and replace it with the phrase "Regional agencies and arrangements are invited, in accordance with Chapter VIII". The point was made that it was not desirable to have regional courts of international justice. Doubts were raised concerning to the phrase "should bear" in the first line of the first sentence of the paragraph.

61. Concerning operative paragraph 6, the view was expressed that it was too restrictive in that it limited the free choice of means for the peaceful settlement of disputes between States. The suggestion was therefore made to delete the phrase "and only when it proves impossible to resolve the dispute, to resort to the means and mechanisms established within the United Nations". The point was made that the paragraph should be brought in line with Article 52 of the Charter. The suggestion was made to add to the paragraph a reference to the right of States to resort to the United Nations. It was proposed to replace the phrase "based on the consistent choice" with the phrase "take into account", and the term "primarily" with the expression "as appropriate". It was further suggested to delete the phrase "by the parties to a local conflict".

62. In his reply, the sponsor observed that the intention of the paragraph was not to limit the free choice of means of the parties, but rather to avoid the simultaneous resort by States to regional organizations and to the United Nations.

63. With respect to operative paragraph 7, the point was made that the idea contained in the first sentence was very important. In that connection, the proposal was made to redraft it so as to read: "The modalities for the cooperation between the United Nations and regional organizations should be flexible and suited to each individual situation". The view was expressed that the second sentence should be drafted in more general terms. The suggestion was made, in that connection, to compile a list of practical forms of cooperation between the United Nations and regional organizations, based on existing cooperation agreements. It was noted that the desirability of avoiding duplication of efforts should be mentioned in the paragraph. It was observed that the term "involves" was too prescriptive. Doubts were raised with regard to the phrase "and being willing to provide the necessary resources". Doubts were also raised with respect to the expression "seconding officials to the United Nations Secretariat".

64. In his reply, the sponsor observed that the term "involves" should be replaced by "may include", in order to conform to the language of the original. He further noted that secondment of officials had occurred in practice.

65. As to operative paragraph 8, the point was made that the idea of encouraging the peaceful settlement of disputes at the level of regional organizations was the thrust of the draft document. The view was expressed, in that connection, that operative paragraphs 5 and 17 also contained this idea and that they should both be merged with operative paragraph 8. Doubts were expressed, however, with respect to this proposal. It was observed that the paragraph did not emphasize the fact that the Security Council was entrusted with the primary responsibility for the maintenance of international peace and security, and that States had the right to resort to the United Nations under Article 35 of the Charter. It was suggested that the phrase "Members of the United Nations" be inserted after the word "States."

66. In reply, the sponsor explained that the addressees of operative paragraphs 5, 8 and 17 were regional organizations, States and the Security Council, respectively, and that there was therefore no unnecessary repetition in the draft document.

67. Regarding operative paragraph 9, it was observed that the development of regional conflict prevention mechanisms was very important. It was proposed that the phrase "at the regional level" be inserted after the word "conflicts". The proposal was made to add at the end of the paragraph the expression "and relevant international instruments". The suggestion was made to place the paragraph earlier in the draft document, because it was drafted in general terms. There was also a proposal to delete the paragraph as a whole.

68. With respect to operative paragraph 10, the view was expressed that, while the idea behind the paragraph deserved support, the activities envisaged could not be undertaken by every regional organization. In that connection, the point was made that financial constraints had to be taken into consideration. There was also the view that the establishment by regional organizations of information networks was not the most efficient way of obtaining information in a particular case. Doubts were raised as to the phrase "and should coordinate that network with the work of the Security Council and the Secretary-General in this area". There was a proposal to replace the phrase "States should pay appropriate attention to the establishment and improvement" with the phrase "States are invited to study the appropriateness of establishing and improving". It was suggested that the phrase "Members of the United Nations" be inserted after the term "States." There was also the proposal to include a reference to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (General Assembly resolution 46/59, annex). The suggestion was made that the paragraph as a whole should be redrafted in more general terms.

69. In his reply, the sponsor expressed the view that information was essential for the prevention of disputes and conflicts. He observed that the paragraph only gave an indicative list of possible activities in this regard.

70. Concerning operative paragraph 11, the view was expressed that it went too much into detail. The point was made that the coordination of the activities of regional organizations with those of the United Nations should aim at avoiding duplication of efforts. The proposal was made to include a reference to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. It was suggested that the phrase "in accordance with the Charter" be inserted after the word "measures". There was also the suggestion that the paragraph as a whole be redrafted to read as follows:

> "States are invited to consider the possibility of strengthening the preventive functions of regional organizations, within their sphere of competences and in accordance with Chapter VIII of the Charter, and of establishing for this purpose procedures and mechanisms capable of identifying and detecting regional disputes and situations at an early stage in their development."

71. As to operative paragraph 12, the view was expressed that it covered too many issues and therefore created a number of difficulties. It was further observed that the measures envisaged in the paragraph were beyond the scope of Article 53 of the Charter and, in some cases, were even beyond the scope of the respective constitutive instruments of regional organizations. It was therefore suggested that the paragraph be deleted. There was, however, the view that regional organizations should play a more active role in the areas described in

the paragraph, but that this idea should be expressed in a clearer manner so that each of the areas covered could be given due consideration. Doubts were raised with respect to the phrase "and maintaining law and order in the event of the outbreak of disorder and confrontations on ethnic, national or religious grounds between States and within countries, at their request or with their agreement", and it was therefore proposed that the phrase be deleted. The point was made that disarmament was a global issue, and should therefore not be dealt with in this draft document. The deletion of the paragraph was accordingly suggested. Different views were also expressed. The question was raised as to whether the cooperation of regional organizations with the United Nations outside the respective areas of such organizations was to be covered by the draft document. A suggestion was made to include a reference to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (General Assembly resolution 46/59, annex).

72. In his reply, the sponsor pointed out that the aim of the paragraph was to ensure that proper training is given to the various categories of peacemaking personnel. He further observed that the intention was not to impinge on the sovereignty of States, but to assist them in resolving their problems.

73. With regard to operative paragraph 13, doubts were voiced regarding the expression "limit the level of military confrontation". It was proposed that the phrase "where appropriate" be added after the term "regional organizations". The suggestion was made to redraft the paragraph so as to read: "States are invited to seek to agree on and adopt, within the framework of regional organizations, methods to build confidence".

74. Concerning operative paragraph 14, it was pointed out again that the issue of disarmament, being a global issue, was outside the scope of the draft document and should be deleted. Doubts were expressed regarding the reference to only one international instrument in this area. There was also the view, however, that the draft document should address the issue of disarmament, albeit in more general terms. The proposal was made to replace both operative paragraphs 14 and 15 by the following paragraph: "States members of regional organizations are invited to continue promoting general and complete disarmament under strict international control. Regional organizations, for their part, are invited to step up their efforts to prevent proliferation in all its aspects."

75. In reply, the sponsor expressed the view that the issue of non-proliferation was an essential element for the maintenance of international peace and security.

76. As to operative paragraph 15, the view was expressed that it dealt with issues outside the scope of the draft document and on which there was no agreement, and that it should therefore be deleted. There was also the view that the idea contained in the paragraph should be retained if drafted in more general terms. A suggestion was made to delete the phrase "within the framework of regional organizations".

77. With regard to operative paragraph 16, doubts were raised as to its usefulness, since it stated the general objective of the draft document.

78. As far as operative paragraphs 17 to 20 are concerned, the point was made that they largely reflected provisions of Chapter VIII of the Charter. In that connection, it was observed that the language used in the draft document should not depart from that of the Charter. There was also a proposal to delete the paragraphs and replace them with a reference to the relevant provisions of the Charter. The view was expressed that reference should be made in the draft

document to the role of the General Assembly in the field of the maintenance of international peace and security.

79. Concerning operative paragraph 21, the view was expressed that it went beyond the scope of the draft document, and should therefore be deleted. There was also the view, however, that the issue of socio-economic progress mentioned in the paragraph should be included in the draft document. It was observed that operative paragraph 7 already covered the issues dealt with in that paragraph. Clarification was sought as to who would engage in the talks envisaged in the paragraph.

80. In his reply, the sponsor pointed out the fact that the paragraph gave an indicative list of the kind of activities that cooperation between regional organizations and the United Nations could entail.

81. With respect to operative paragraph 22, the view was expressed that contacts between the heads of regional organizations and the Secretary-General of the United Nations need not necessarily involve meetings. In that connection, it was suggested that the term "should meet" be replaced by the word "could". Doubts were raised with regard to the expression "political development". The point was made that the paragraph should stress more clearly that economic and social problems could have a bearing on international peace and security. In that connection, a proposal was made to redraft the paragraph as follows: "The Secretary-General of the United Nations and the leaders of regional organizations should meet in order to resolve specific problems regarding economic, social and cultural development, which may constitute a threat to international peace and security." The point was made that contacts at other levels between the organizations in question should also be envisaged.

82. In his reply, the sponsor observed that the paragraph reflected the current practice of cooperation between the United Nations and regional organizations.

83. As to operative paragraph 23, the view was expressed that the issues contained therein were indeed relevant to the maintenance of international peace and security, but that this idea should be stated more clearly. In this connection, the point was made that combating State-sponsored terrorism was consistent with the role of regional organizations under the Charter. The point was further made that, in combating international terrorism, States should cooperate at international, regional and subregional levels. There was also the view that these issues were too important to be included in the draft document in such concise terms, and that the paragraph should therefore be deleted. It was observed that the paragraph did not focus on the cooperation between the United Nations and regional organizations in these areas.

84. Concerning operative paragraph 24, the view was expressed that it should be redrafted in more precise terms. Clarification was sought as to the meaning of the phrase "strengthening their security". There was the view that the paragraph was outside the scope of the draft document and should therefore be deleted.

85. With regard to operative paragraph 25, the point was made that its objective went beyond the scope of the draft document. Clarification was sought as to how the Security Council would provide such guarantees of regional security. It was also pointed out that the idea contained in the paragraph was not applicable to all regional organizations.

86. In his reply, the sponsor observed that the term "guarantees" should be interpreted in a broad sense. He further noted that the Security Council had provided guarantees in practice.

87. Regarding operative paragraph 26, the view was expressed that it dealt with issues which were the internal affairs of States, and should therefore be deleted. In particular, the point was made that it was States that were responsible for upholding human rights. It was observed that the issues presented in the paragraph had already been covered by a preambular paragraph. The suggestion was made to redraft the paragraph so as to read as follows:

> "Regional organizations should consider the possibility of taking steps in coordination with the United Nations, at the request of States, with a view to promoting the economic and social progress of the peoples of the region and the development of all the States of the region."

There was also the view, however, that the idea set forth in the paragraph should be retained, and that it should, to that end, be redrafted so as to clarify the link between the questions mentioned in the paragraph and the maintenance of international peace and security.

88. As to operative paragraph 27, the view was expressed that it was outside the scope of the draft document. It was observed that it was up to regional organizations themselves to define their respective mandates. The point was made that all the objectives mentioned in the paragraph could not be attained in practice. The suggestion was made to redraft the paragraph in more general terms and to place it in the preamble.

89. Concerning operative paragraph 28, the suggestion was made to redraft the paragraph to read as follows:

> "In dealing with the issues of the maintenance of international peace and security and the peaceful settlement of disputes in their respective regions, regional organizations should take into account, where appropriate, the political, economic, environmental and humanitarian aspects of security."

B. Consideration of the working paper submitted by Cuba entitled "Strengthening of the role of the Organization and enhancement of its efficiency"

90. At its 16th and 20th meetings, on 15 and 17 March 1993, the Working Group considered the revised working paper submitted by Cuba (A/AC.182/1993/CRP.2), the text of which read as follows:

"STRENGTHENING OF THE ROLE OF THE UNITED NATIONS IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

"STRENGTHENING OF THE ROLE OF THE ORGANIZATION AND ENHANCEMENT OF ITS EFFICIENCY

"The changes that have taken place on the international scene present the world community assembled at the United Nations with new and pressing challenges. Although what we knew as the East-West confrontation has disappeared and the dangers of a nuclear confrontation have thus subsided, the unjust disparities - not simply economic but also political and military - between the rich, industrialized North and the underdeveloped, impoverished South, remain and continue to grow.

"Existing conditions should encourage efforts to deal constructively with the remaining sources of tension and instability and to resolve them as soon as possible within the context of the principles, purposes and objectives set out in the Charter of the United Nations.

"The expanded membership of the United Nations - the number of Members has more than tripled since the Organization was founded - is a factor which cannot be ignored, either from the political and economic standpoint or from the institutional and structural standpoint. The positive contribution this has made to strengthening the role of the United Nations in the maintenance of international peace and security must be fully acknowledged and incorporated in the functioning of the Organization. Accordingly, the expanded membership of the United Nations must be reflected in the composition of the various United Nations organs, both those established in the Charter and others, by properly applying the principle of equitable geographical distribution and thereby facilitating the active participation of all Members of the United Nations on just and equitable terms in the substantive activities of the Organization.

"The mandates of the various organs of the United Nations and the functional relationships between them - primarily the General Assembly and the Security Council and the Secretariat - must not only be preserved but strengthened in accordance with the relevant provisions of the Charter, so as to create in the United Nations a mesh in which all legitimate interests may be protected and all sensitive issues tackled, and in which the democratization of the United Nations may proceed based on the universal nature of its membership, with truly equal rights and duties for all. Under the present circumstances, this is one of the essential premises for strengthening the role of the Organization in the maintenance of international peace and security.

"In this context, the unrepresentative nature of the Security Council, the fact that some members of that body are not subject to periodic confirmation by the international community through democratic procedures and that they enjoy special privileges that go far beyond the exercise of the 'veto power' included in the Charter in view of the conditions

prevailing in 1945, must be re-examined as a matter of urgency, since they are key elements that influence not only the exercise of democracy within the United Nations but also the role that the Organization must play in the maintenance of international peace and security.

"Likewise, steps should be taken to ensure that the Security Council is accountable to the General Assembly so that it complies with not only the letter but also the spirit of the relevant provisions of the Charter.

"It is also important to ensure the transparency of the discussion and the decision-making process in the Council, while at the same time resisting all efforts to expand, implicitly or explicitly, the functions and powers of the Security Council to spheres beyond the mandate conferred on it by the Charter, so as to preserve not only the relevance and integrity of other organs of the United Nations, but also to prevent actions that might ultimately lead to further imbalances and breaches of the democratic principles which must govern the activities of the Organization.

"In the light of the above, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization should consider and make recommendations on the following matters:

"1. Preparation of reports on the following subjects:

"(a) The need for and desirability of eliminating or modifying the special privileges enjoyed by the permanent members of the Security Council, both those established by the Charter and those resulting from practice, the latter being actually even more of an impediment to the application of democratic principles to the work of the Council;

"(b) The present composition of the Security Council, in the light of the principle of equitable geographical distribution and of the expanded membership of the Organization, as a contribution by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization under item 33 of the agenda of the forty-eighth session of the General Assembly;

"(c) The Provisional Rules of Procedure of the Security Council [S/96/Rev.7] with recommendations for their proper application; and

"(d) The functions and mandate of the Security Council in the light of Article 24 of the Charter.

"2. Creation of a working group to prepare guidelines on recourse to Chapter VII of the Charter, in the light of the various issues pertaining to the mandate and functions of the Security Council, and on the scope and application of Article 25 of the Charter.

"3. Modification of the format and contents of the annual reports submitted by the Security Council to the General Assembly pursuant to Article 12 of the Charter, to include not only a list of cases that have come before the Council in a given year, but also a substantive analysis of them from the standpoint both of their actual consideration and of the effects of any decisions taken.

"4. Enhancement of the transparency of the work of the Security Council through, inter alia, the following measures:

"(a) Preparation of summary records with limited distribution or some other type of summary of the discussions held and agreements reached in plenary informal consultations of the Security Council;

"(b) A listing in the Journal of the United Nations of items to be considered both in formal meetings of the Security Council and in plenary informal consultations;

"(c) Distribution to States Members of the United Nations, at the beginning of each month, of an annotated list of items to be considered by the Security Council during that month; and

"(d) Organization of press conferences once a week by the President of the Security Council."

91. In introducing the working paper, the sponsor observed that its aim was to ensure that the Security Council fulfilled its functions under the Charter in a manner consistent with the process of democratization of the Organization. The working paper, which, he noted, was the result of extensive consultations with interested delegations, presented a number of concrete proposals in this respect, for the consideration of the Special Committee.

92. The view was expressed that the Special Committee had not allocated sufficient time for the consideration of the working paper and that it should therefore be given priority at the next session of the Committee. The point was made that the proposals in the working paper were timely and deserved careful consideration. Some delegations were of the view, however, that the working paper could not be considered as a basis for a meaningful discussion.

C. Consideration of the revised proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security

93. At its 16th and 20th meetings, on 15 and 17 March 1993, the Working Group considered the revised proposal submitted by the Libyan Arab Jamahiriya (A/AC.182/1993/CRP.1), the text of which read as follows:

"Revised proposal submitted by the Socialist People's Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security

"The maintenance of international peace and security is one of the primary purposes of the United Nations set forth in Article 1 of the Charter because of its far-reaching impact on the lives and welfare of peoples. To accomplish this aim, the framers of the Charter sought to adopt effective collective measures to prevent and eliminate threats to peace, to suppress acts of aggression and other breaches of the peace and to employ peaceful means, in accordance with the principles of justice and international law, for the resolution or settlement of disputes between States that might lead to a breach of the peace. The Security Council was entrusted with primary responsibility for the maintenance of international peace and security in order to ensure that action taken by the United Nations would be prompt and effective. Article 24 of the Charter records

the agreement that, in carrying out its duties under this responsibility, the Council acts on behalf of the Members of the United Nations.

"The experience of past decades, however, has shown that the Security Council has been unable to approximate the goals laid down by the framers of the Charter. Moreover, it has revealed an incapacity and a deficiency in coping with many issues which have prevented the Council from being an effective instrument and have had an adverse impact on bringing collective action to bear for the maintenance of peace, justice and the rule of law.

"The Libyan Arab Jamahiriya is of the view that there is a pressing need to evaluate the experience of past decades in an endeavour to strengthen the role of the Security Council in the maintenance of international peace and security. In presenting to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization certain ideas that it feels would be of assistance in achieving this objective, it is aware that countries that are members of the Committee and other States have other views and ideas and that discussion in the Committee will be an important factor in enhancing and developing these ideas.

"(a) Discussion of ways and means of strengthening the role of the Security Council in regard to the maintenance of international peace and security in the light of past experience, and consideration of the elimination of the adverse consequences for the maintenance of international peace and security of the application of the principle of consensus among the permanent members of the Council, which has made it powerless to fulfil the responsibilities conferred on it under the Charter;

"(b) Identification of those non-procedural matters in which the use of the veto can be suspended or restricted. Subject to further negotiations, it would be appropriate to explore some fields in which the principle of consensus would not apply, such as its not being invoked to defend acts of aggression, occupation and injustice;

"(c) Much may be said of the changes that have taken place in the international arena and of the fact that they have mitigated the adverse consequences of the principle of consensus among permanent members because of the end of the confrontation between East and West. However, this is merely a factor of limited effect that does not render discussion of the principle unnecessary. In another respect, these changes have aroused fears of the domination by certain parties of the work of the Council and of its exploitation for the achievement of unilateral objectives. There is also manifest concern at the policy of the double standard that adheres to the positions adopted by the Council with regard to certain issues. All of this requires the exploration of measures to eliminate such fears and such concern and to promote justice and the rule of law;

"(d) Expansion of the membership of the Security Council to reflect the great increase that has taken place in the number of Members of the United Nations;

"(e) Consideration of strengthening the role of the General Assembly in the maintenance of international peace and security as a common responsibility of all Member States."

94. In introducing the proposal, the sponsor made the point that it was necessary to democratize the functioning of the Security Council, in order to enhance its efficiency and to ensure that it fulfilled the mandate entrusted to

it under the Charter in the field of the maintenance of international peace and security. He highlighted the concrete proposals of his delegation in this regard. He expressed the hope that the Special Committee would allocate sufficient time for the consideration of the working paper at its next session.

D. Consideration of the revised working paper submitted by the Russian Federation entitled "New issues for consideration in the Special Committee"

95. At its 20th meeting, on 17 March 1993, the Working Group considered the revised working paper submitted by the Russian Federation (A/AC.182/L.65/Rev.1), the text of which read as follows:

"NEW ISSUES FOR CONSIDERATION IN THE SPECIAL COMMITTEE

"During the exchange of views between members of the Special Committee in 1993 and during the consideration of the Special Committee's report by the General Assembly at its forty-seventh session, the following proposals and ideas, which could be discussed at a later stage of the Committee's work, elicited a positive response.

"1. Broadening the Secretary-General's peacemaking efforts. In this context, the following recommendations regarding the Secretary-General's activities could be considered:

"- The Secretary-General could provide assistance in the holding of consultations at various levels between the United Nations and regional organizations with a view to achieving broad international consensus on the substance of a pressing problem and on concerted action for its solution;

"- Submit, on his own initiative, reports on individual issues relating to the maintenance of international peace and security, including disarmament, for consideration by the Security Council;

"- Hold meetings, as necessary, with leaders of regional organizations in order to exchange information and propose joint initiatives with a view to settling local disputes and solving problems relating to the political, economic, social and cultural development of countries of a given region;

"- Exercise more frequently his right under Article 99 of the Charter of the United Nations to bring to the attention of the Security Council any matters that, in his opinion, may threaten the maintenance of international peace and security, including serious economic and environmental problems and humanitarian emergencies;

"- Make it a regular practice for the General Assembly to consider thoroughly his annual reports on the work of the Organization and, if need be, adopt decisions on the conclusions and recommendations contained therein.

"2. In the light of the increasing role in the prevention and peaceful settlement of disputes and conflicts that, in addition to classical mechanisms (mediation, good offices, conciliation and so forth), is being played by institutions and mechanisms established under the Charter,

especially the Security Council, the General Assembly, the Secretary-General and the International Court of Justice, and also by the peacemaking structures of regional organizations, we believe that the Special Committee could in principle undertake the task of preparing a draft convention on the peaceful settlement of disputes with the aid of a third party. In drafting the convention, the Special Committee should make use of the provisions of the decision of the Council of the Conference on Security and Cooperation in Europe (CSCE), which met at Stockholm on 14 and 15 December 1992 and adopted, inter alia, the Convention on Conciliation and Arbitration within CSCE. By so doing, the Special Committee would become involved in the wide-ranging long-term programme on the development of international law within the framework of the United Nations Decade of International Law proclaimed by the General Assembly for the 1990s [resolution 46/53].

"3. It might be useful for the Special Committee to consider ways and means of ensuring the fuller realization of the potential of the Charter of the United Nations and the norms of international law and, in particular, ways and means of adapting the Charter to changing developments in international relations (preparation of international agreements to supplement the Charter, establishment of new institutions and mechanisms, elaboration of declarations by the General Assembly, preparation of Security Council resolutions and statements, achievement of consensus agreement on the interpretation and 'understanding' of individual provisions of the Charter and so forth).

"4. Another urgent matter is the issue of sanctions against, and related measures for exerting pressure on, a State that has violated the peace or is not implementing Security Council decisions. The consideration of this matter would be especially appropriate in connection with the Organization's unprecedented use of sanctions as a political and economic means of peacemaking. In this area, special attention should be given to the following questions: the role of the United Nations and regional organizations in the implementation of sanctions; mechanisms for compensating States whose compliance with sanctions results in losses; strengthening of the role of the International Court of Justice in establishing procedures for the implementation of sanctions; applicability of sanctions in cases of mass human rights violations and environmental damage; a consistent 'order' for increasing sanctions; and so forth.

"5. Another question that is highly relevant today and could be considered by the Special Committee has to do with provisional measures that the Security Council may take in accordance with Article 40 of the Charter in order to prevent an aggravation of the situation and resolve dangerous crises and regional conflicts. Such provisional measures might include the Security Council's demand for a cease-fire, the separation of the opposing sides, the establishment of demilitarized zones and 'humanitarian corridors', and the provision of assistance to States that have suffered from their imposition of sanctions under Chapter VII of the Charter, and so forth.

"6. We note with satisfaction the positive attitude towards the Russian proposals for strengthening the preventive functions of the United Nations, as well as the desire for the Special Committee to explore the question of broadening the sphere of their application. In our view, this could include the prevention of potentially explosive situations, including those caused by conflicts between different ethnic or religious groups, and also by internal socio-economic, environmental, demographic and other factors; the Secretary-General's enhanced ability to perform advisory and mediatory

functions in order to avert the threat of war on a global or regional scale; the formation, under United Nations auspices, of an extensive network for monitoring, collecting and processing information on the situation in areas of conflict; and so forth.

"7. We are also interested in the idea that the Special Committee might consider measures aimed at strengthening the collective security regime provided for in the Charter of the United Nations, especially in the light of the increased decentralization of peace-keeping and peacemaking responsibilities between the United Nations and regional and subregional organizations. In this regard, it might be useful to consider the observations and proposals made by the Security Council and the General Assembly during their consideration of the Secretary-General's report entitled 'An Agenda for Peace' (A/47/277-S/24111)."

96. In introducing the working paper, the sponsor observed that the Special Committee should, in addition to the topics on its current mandate, consider the question of its future agenda. His delegation had, to that end, made several proposals, which could be part of a long-term programme of work for the Special Committee. In this connection, he remarked that any topic included in the mandate of the Committee had to be considered within the framework of the Charter.

E. Consideration of working papers on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter

97. The working papers (A/AC.182/L.76/Rev.1 and A/AC.182/L.77) were considered by the Special Committee at its 178th, 179th and 180th plenary meetings and at the 18th, 19th and 20th meetings of its Working Group.

98. The text of working paper A/AC.182/L.76/Rev.1 reads as follows:

"IMPLEMENTATION OF THE PROVISIONS OF THE CHARTER OF THE UNITED NATIONS RELATED TO ASSISTANCE TO THIRD STATES AFFECTED BY THE APPLICATION OF SANCTIONS UNDER CHAPTER VII OF THE CHARTER

"Working paper submitted by Bolivia, Bulgaria, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Malta, Mauritania, Mongolia, Mozambique, Nicaragua, Panama, Paraguay, Republic of Moldova, Romania, Ukraine and Uruguay

"The General Assembly,

"Recognizing that the imposition of sanctions against a State under Chapter VII of the Charter of the United Nations may require the joint efforts of Member States to offer assistance to third States economically affected by the sanctions,

"Recalling Article 49 of the Charter of the United Nations, which spells out the obligation of the Member States to join in affording mutual assistance in carrying out measures decided upon by the Security Council in conformity with Chapter VII of the Charter,

"Recalling also the special responsibility of the Security Council under Article 50 of the Charter, which entitles States which find

themselves confronted with special economic problems as a result of the carrying out of preventive or enforcement measures taken by the Security Council against any other State, to consult the Security Council with regard to a solution of those problems,

"Welcoming the recommendation of the Secretary-General in his report entitled 'An Agenda for Peace' (A/47/277-S/24111) that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties; such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council,

"Noting also:

"(a) That the question of assistance to third States affected by the application of sanctions has been addressed recently in several forums, including the General Assembly and its subsidiary organs and the Security Council,

"(b) Its resolution 47/120 of 18 December 1992, entitled 'An Agenda for Peace, preventive diplomacy and related matters', in which it decided to continue early in 1993 its examination of other recommendations contained in the Secretary-General's report entitled 'An Agenda for Peace', including implementation of the provisions of Article 50 of the Charter of the United Nations,

"(c) The statement made by the President of the Security Council (S/25036), in which the Security Council expressed its determination to consider this matter further,

"Recognizing that third States are still confronted with adverse economic and social problems due to the imposition of sanctions under Chapter VII,

"Recognizing also the need for an appropriate mechanism and procedures to address these problems,

"Decides to establish a fund, consistent with relevant resolutions of the Security Council, to financially assist third States affected by the imposition of sanctions under Chapter VII, according to the following regulations:

"1. Contributions to the fund shall be of two main kinds:

"(a) A percentage of assessed contributions;

"(b) A special account established for this purpose to be administered by the Secretary-General. Such an account will be financed from voluntary contributions by Member States, and from funds available to international organizations both inside and outside the United Nations system, in particular the international financial institutions and the regional development banks, as well as non-governmental organizations and private institutions and individuals;

"2. Invites the Secretary-General to prepare draft guidelines on the operation of the fund and to present these guidelines to the Security Council and the General Assembly for further consideration and adoption;

"3. Resources should be utilized to provide direct financial assistance, inter alia, through bilateral or multilateral credit lines, as well as to finance technical cooperation programmes in support of the affected countries, in the context of Article 50;

"4. All other types of support, including direct assistance in cash or in kind, provision of alternative sources of supply and alternative markets, specific commodity purchase agreements, compensatory adjustments of international tariffs, assistance for promotion of investments and technical cooperation to the affected countries, should be encouraged;

"Further requests the Security Council to consider preparing a set of guidelines and or procedure to be applied in the consideration of the applications by the affected countries for assistance, in the context of Article 50. The guidelines may include, inter alia:

- The right to approach the Security Council for assistance;

- Consideration, without exception and undue delay, of all applications for assistance under Article 50;

- Rendering non-preferential and fair treatment to all applications;

- Inviting the affected Member States to its meetings and to the meetings of its subsidiary bodies;

"Requests the Secretary-General to report on a regular basis about the implementation of the present resolution."

99. The text of working paper A/AC.182/L.77 reads as follows:

"IMPLEMENTATION OF THE PROVISIONS OF THE CHARTER OF THE UNITED NATIONS RELATED TO ASSISTANCE TO THIRD STATES AFFECTED BY THE APPLICATION OF SANCTIONS UNDER CHAPTER VII OF THE CHARTER

"Working paper submitted by India and Nepal

"The General Assembly,

"Recognizing that in today's conditions of economic interdependence, the implementation of economic sanctions under Chapter VII of the Charter of the United Nations may place an extremely heavy burden on the economies of third States,

"Recognizing also that all provisions of Chapter VII are of equal importance for the effective carrying out of preventive or enforcement measures envisaged therein; these provisions should be interpreted and implemented in their entirety,

"Recalling Article 50 of the Charter, which entitles States which find themselves confronted with special economic problems as a result of the carrying out of preventive or enforcement measures taken by the Security Council against any other State, to consult the Security Council with regard to a solution of those problems,

"Welcoming the recommendation of the Secretary-General in his report entitled 'An Agenda for Peace' (A/47/277-S/24111) that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties; such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council,

"Recalling its resolution 47/120 of 18 December 1992 entitled 'An Agenda for Peace: preventive diplomacy and related matters', in which it decided to continue early in 1993 its examination of other recommendations contained in the Secretary-General's report entitled 'An Agenda for Peace', including implementation of the provisions of Article 50 of the Charter of the United Nations,

"Recalling further the statement by the President of the Security Council (S/25036), in which the Security Council expressed its determination to consider this matter further,

"Calls upon the Security Council to take the following measures, inter alia, as a part of the Security Council resolutions imposing economic sanctions, to assist third States affected by the imposition of sanctions under Chapter VII:

"(a) Establishment of a Trust Fund, with contributions to the Fund consisting of:

(i) Assessed contributions in accordance with a scale to be determined by the General Assembly;

(ii) Voluntary contributions from Member States and international organizations;

"(b) The level of the Trust Fund shall be determined by the Security Council on a case-by-case basis, in accordance with the submissions made by the affected Member States;

"(c) The Fund should be managed and operated by the Security Council, where appropriate in consultation with the Secretary-General, or by any other body deemed appropriate by the Security Council for this purpose, and the affected Member States should be able to approach this body without any exception for redressal of their problems;

"(d) Other measures in consultation with Member States and international financial institutions, such as additional bilateral credit lines, assistance in promotion of exports of the affected countries, assistance for technical cooperation projects in these countries, assistance for promotion of investment in the affected countries etc."

1. Introduction of working paper A/AC.182/L.76/Rev.1 in the plenary by one of its sponsors

100. In introducing working paper A/AC.182/L.76/Rev.1, one of the sponsors emphasized that the working paper was a response to the need to address the issue of economic consequences suffered by a number of States from the application of sanctions imposed under Security Council resolutions. The representative also noted that this issue had become even more urgent because of the increased activity of the Security Council in the application of sanctions

under Chapter VII of the Charter of the United Nations and because of the increased economic interdependence of States in the modern world. The representative recalled that a number of States, affected by the application of those sanctions, had submitted to the President of the Security Council a request for assistance under Article 50 of the Charter.

101. The sponsor also recalled, inter alia, that Security Council resolution 669 (1990), of 24 September 1990, had entrusted the Security Council Committee established under resolution 661 (1990) of 6 August 1990 with the task of examining requests for assistance under Article 50 and of making recommendations to the President of the Security Council for appropriate action. She also recalled that the Committee had appealed to all States on an urgent basis to provide immediate economic assistance to the applicant States and invited the competent organs and specialized agencies of the United Nations system to review their programmes of assistance to such States. Based on those recommendations, the Secretary-General had addressed letters to States and the concerned organs and agencies of the United Nations system expressing the need to assist the States affected by the application of the sanctions. However, the representative remarked that the responses received in this case, as well as in some other cases, were not commensurate with the urgent needs of the affected countries.

102. The representative further noted that the question of assistance to the States affected by the application of sanctions had been addressed recently in several forums, including the General Assembly and its subsidiary organs and the Security Council. In this connection, she referred, in particular, to the recommendation of the Secretary-General, in his report entitled "An Agenda for Peace" (A/47/277-S/24111), that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that could be put in place to insulate States from such difficulties; such measures would be a matter of equity and a means of encouraging States to cooperate with the decisions of the Council. The representative also referred to recent relevant resolutions and actions of the Security Council and the General Assembly in which they had decided to continue the examination of other relevant recommendations presented in the Secretary-General's report entitled "An Agenda for Peace", and to consider this matter further. She noted that many States supported the ideas set forth in paragraph 114 and subsequent paragraphs of the previous report of the Special Committee, 4/ such as that of an equitable sharing of the costs arising from the application of economic sanctions, and the concept of "mutual assistance".

103. In the opinion of the representative, Article 50 should be interpreted on an equal footing with the other articles of Chapter VII of the Charter. The representative stated that, in that connection, the proposed working paper highlighted the need for establishing an automatic permanent mechanism to ensure an adequate response to requests for assistance submitted under Article 50 - from the fund established by the General Assembly, contributions to which should be of two types: (a) mandatory (a percentage of assessed contributions, which did not imply additional contributions from Member States); and (b) optional (voluntary contributions by Member States, and from funds available to international organizations, both inside and outside the United Nations system). The representative also underlined the need to strike a balance between the main bodies of the United Nations dealing with this issue and to envisage the role of the General Assembly, with respect to the budget, the role of the Security Council, with respect to the preparation of guidelines and/or procedures to be applied in the consideration of the application by the affected countries, and the role of the Secretary-General, with respect to administration of the fund.

2. Introduction of working paper A/AC.182/L.77 in the plenary by one of the sponsors 5/

104. In introducing working paper A/AC.182/L.77, one of the sponsors stated that he endorsed the language of the other working paper, which had just been introduced and which, according to him, was similar to the language and basic ideas of the paper being introduced by him. He pointed out, however, two main differences between the papers. The first difference was that working paper A/AC.182/L.77 emphasized the responsibility of the Security Council to deal with all issues arising from the application of Article 50 of the Charter; thus, according to the working paper, it was the Council that, while imposing economic sanctions under Chapter VII of the Charter, should simultaneously devise appropriate procedures for automatic assistance to the States affected by the imposition of sanctions. The second main difference was that the trust fund being envisaged is to be established and administered by the Security Council, which would determine its level on a case-by-case basis.

3. General comments on working papers A/AC.182/L.76/Rev.1 and A/AC.182/L.77 in the plenary

105. In their general comments on the papers, a number of delegations emphasized the need to assist the States affected by the sanctions imposed by the Security Council under Chapter VII of the Charter and considered the current system of application of Article 50 insufficient and referred to the recommendation of the Secretary-General in his report entitled "An Agenda for Peace" that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties, considering that such measures would be a matter of equity and international solidarity and a means of encouraging States to cooperate with decisions of the Council.

106. Support was also given by a number of delegations to the idea of establishing a special fund to compensate the States economically affected by the sanctions and to devise other appropriate measures in this connection. They also suggested that consideration be given to the preparation of a set of guidelines to be applied in the Security Council when dealing with all applications for assistance by the affected States, in the context of Article 50. A suggestion was also made that such States could be invited to the meetings of the Council when discussing the matter affecting them.

107. Another view supported a case-by-case treatment of the affected States in accordance with the principle of justice and fairness. It was further suggested, in this connection, that the allocation of funds to be established by a variety of means, taking into consideration the relative and proportional hardship encountered in each case, should become an important element of any mechanism envisaged. According to that view, the idea was to establish a distinct mechanism that would provide crucial studies and data concerning the economies of the States most likely to be affected by the implementation of sanctions, thus enabling the Security Council, before adopting any resolution imposing sanctions, to consider the possible negative effects on the economies of the affected States on a case-by-case basis and to distribute the funds that would possibly be made available, on a case-by-case basis, while taking into consideration the relative and proportional hardship encountered by each individual State.

108. A number of delegations pointed out that the Secretary-General, while addressing the issue of assistance to the affected States, had not recommended the creation of a trust fund or the use of a percentage of assessed

contributions. According to that view, such proposals, including the idea of using voluntary contributions, would not provide practical solutions, but would instead lead to false expectations and to additional burdens on States already making contributions towards finding solutions to the problems facing the United Nations. Other delegations expressed a different view, stressing the need to explore just and appropriate solutions to that problem.

109. Doubts were expressed with regard to the necessity and practicability of establishing a special fund in the context of Article 50, noting that consideration of this issue within the framework of the Special Committee should be postponed until the publication of the anticipated report of the Secretary-General on the issue in the context of Article 50 of the Charter. Recognizing the need to assist the affected States, they emphasized, however, that the current system of assistance had been used effectively in a number of cases and that existing mechanisms and practice in that area should be studied and used for addressing this issue. In that respect, reference was made to the evidence of assistance received from international financial institutions, such as the International Monetary Fund, the World Bank and other components of the United Nations system. Other delegations pointed out that such assistance had been offered in the framework of normal cooperation procedures and not under Article 50. But the view was maintained that the assistance was specifically linked to the application of Article 50 of the Charter.

110. Other delegations pointed out that, while they recognized the importance of the paper which the Secretary-General had been requested to present on this question and which would no doubt be a source of important information, they stressed that the Committee should nevertheless undertake the consideration of the two working papers without waiting for the Secretary-General's report, as it had done in similar cases.

111. The view was expressed that Article 50 did not give a legal right to compensation, but a right to consult the Security Council with regard to a solution of those problems. Several elements of a possible framework for further consideration of the matter were suggested: (a) to have a clear and common understanding of the relevant Charter provisions and of their interpretation in the Charter system of preventive and enforcement measures, taking into account that, in legal terms, the obligation to implement mandatory sanctions is unqualified; (b) to have a common understanding of the past experience under Article 50; (c) to determine whether it is, in fact, necessary or feasible to put in place new mechanisms of universal application; (d) to address questions of causation and assessment, taking into consideration that it is extremely difficult to establish the precise effect of sanctions on an economy.

112. The view was also expressed that not only developing, but also developed countries could be affected by the imposition of sanctions and could apply for assistance, and that flexibility would be needed in approaching this issue on a case-by-case basis, instead of trying to establish a system aimed at achieving automatic assistance. Another view was expressed, however, that the evaluation of the hardship encountered by a State, and thus its eligibility for assistance, should take into consideration the relative and proportional hardship based on the size and diversity of its economy.

113. Some delegations pointed out that an important role in the solution of the problem of assistance should be played by such international financial institutions as the International Monetary Fund, the World Bank and the General Agreement on Tariffs and Trade. Other delegations, however, remarked that such institutions had not been established for that purpose and lacked the necessary mechanisms for dealing with such issues.

114. There was also the view that functional interpretation should be given to Article 50, so that the right of the affected States to consult the Security Council with regard to a solution of special economic problems as a result of sanctions, as provided in the Article, should lead to practical results commensurate with urgent needs of the affected countries.

115. Those speaking in general support of both working papers considered that they provided a useful basis for discussion towards finding practical solutions to the problem of assistance to the States affected by sanctions. They also regarded both papers as complementary in substance and suggested that the papers be considered simultaneously by the Special Committee and that efforts be made to combine them into a single document, in order to enable the Committee to contribute to the solution of the problem of the application of Article 50 of the Charter.

116. There was also the view, however, that the differences between the working papers were too serious. Thus, they could not be considered simultaneously. The further point was made that the proposals for a trust fund or funds contained in both of them could not be regarded as a basis for consideration of this item. Those supporting this view expressed strong doubts concerning the necessity of establishing a special fund in the context of Article 50. They moreover suggested that the consideration of this item by the Special Committee should be postponed until the publication of the anticipated report of the Secretary-General on the same question which they hoped would be received at a very early date. It was their view that, while there was the need to assist the States affected by sanctions, the current system of assistance had been used effectively in a number of cases and that the existing mechanisms and practice should continue to be used for addressing this problem. The point was also made that it was necessary to envisage a system that would result in the evaluation by international economic and financial institutions of the degree of damage suffered by the affected States. It was pointed out that, in addition to the Security Council and the General Assembly, specialized agencies with economic and financial competence and regional organizations should also try to find a solution to the problem of assistance to the affected States. An objection was raised, however, to the use of the term "third States" in the context of the article.

117. The point was also made that consideration of this issue in the Committee could not proceed on the basis of documents presented in the form of draft resolutions and that it might be preferable to approach the discussion by exchanging views on certain subject-matter and specific issues relating to the application of sanctions under Article 50 of the Charter. Under that view, the current discussion should not result in engaging in the drafting exercise until the anticipated report by the Secretary-General on the issue under consideration was available, and until an agreement was reached on general issues of substance.

4. Consideration of working papers A/AC.182/L.76/Rev.1 and A/AC.182/L.77 in the Working Group

118. The view was expressed that, since the two working papers reflected the same basic ideas about the existing system and practice relating to Article 50 of the Charter, the two working papers could indeed be discussed simultaneously, as had been suggested in the plenary meeting. But there was also the view which emphasized the significant differences between the working papers, as indicated by one of the sponsors of working paper A/AC.182/L.77, and rejected the idea of simultaneous consideration of the two working papers.

119. The question as to whether it was appropriate to proceed with a discussion of this question on the basis of the two documents presented in the form of a draft resolution, even if merged into one, was raised again. The point was re-emphasized that it would only be useful to consider the two documents as a frame of reference while concentrating on the discussion of such general matters of substance as: determination of the need to establish a fund for the implementation of Article 50 of the Charter; and determination of whether the current system of implementation was effective or not. Others supporting that view also pointed out additional issues to be discussed, such as the legal question of the "functional" interpretation of Article 50 of the Charter; economic issues of the application of sanctions and assistance to the affected States; responsibility of the States against which sanctions were applied; determination whether an ad hoc or a permanent solution was needed with respect to assistance to the affected States; and other possible solutions to the problem. Suggestions were also made regarding the need to determine what kind of bodies should be involved in the mechanism to be established and what should be the nature of such a mechanism.

120. Those prepared to use the two working papers simultaneously as the basis for discussion also reiterated their views supporting the establishment of the fund under Article 50. They pointed out that the existing system of offering assistance to States affected by the imposition of sanctions was not effective. They emphasized in this connection that most of the existing international financial institutions to which reference had been made could not properly address the urgent needs of the affected States, especially developing countries, and had not been established for that purpose. According to the supporters of this view, however, further discussions on how such financial institutions might be called upon to offer assistance could still be explored, as expressly mentioned in operative paragraphs 1 (b) and 3 of working paper A/AC.182/L.76/Rev.1. They reiterated their call for the establishment of a viable mechanism for the implementation of Article 50 of the Charter and that the right given to a State thereunder to consult the Security Council would remain meaningless unless procedures were established to bring about practical results from such consultations.

121. During the discussion, one of the sponsors of working paper A/AC.182/L.77 stated that their proposal was similar and complementary to a great extent to the other proposal, set forth in working paper A/AC.182/L.76/Rev.1. The major differences were in operative paragraph 1 (A/AC.182/L.76/Rev.1), in which it was suggested that the fund was to be established by the General Assembly, whereas in the other working paper (A/AC.182/L.77) it was suggested that it should be established by the Security Council on a case-by-case basis. Accordingly, in the sponsor's view, the two working papers could be merged, provided that the basic idea of the Security Council establishing the fund would be maintained and that it would be the Council that should, when adopting resolutions imposing sanctions, establish the fund to assist the State affected by such sanctions. It was proposed that the two groups of co-sponsors could work together to combine the text.

IV. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Statement of the Rapporteur

122. In connection with this topic, the Working Group had before it document A/AC.182/L.75, which set forth in its annex the text of the draft articles entitled "United Nations rules for the conciliation of disputes between States" and, in its appendix, the text of the draft resolution under the same title. The document was a revised version of the proposal (A/45/742) made by the delegation of Guatemala to the General Assembly at its forty-fifth session which was submitted to the Special Committee pursuant to paragraph 182 of the report of the Committee on its 1992 session. 6/ The text of the proposed draft articles read as follows:

"UNITED NATIONS RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

"CHAPTER I

"APPLICATION OF THE RULES

"Article 1

"1. These rules apply to the conciliation of disputes between States which it has not been possible to settle through the diplomatic channel.

"2. The States applying these rules may at any time agree to exclude or amend any of their provisions.

"CHAPTER II

"INITIATION OF THE CONCILIATION PROCEEDINGS

"Article 2

"1. The State which initiates conciliation proceedings in accordance with these rules shall send the other State a written invitation to conduct a process of conciliation in accordance with these rules, identifying and defining the subject of the dispute. In the invitation, the State initiating the conciliation proceedings shall indicate the amendments it proposes to the rules, if any, its choice as regards the number of conciliators, the place it proposes as the seat of the commission referred to in article 3 below and the maximum duration of the Commission's work, as stipulated in article 24.

"2. The conciliation proceedings shall begin as soon as possible after the State to which the invitation has been sent has accepted it or, if it is not accepted, after the States have agreed to apply an amended version of these rules.

"3. If the States cannot reach agreement on the definition of the dispute, they may jointly request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also request his assistance to resolve any other difficulty they may have in reaching an agreement on the terms of the conciliation proceedings.

"CHAPTER III

"NUMBER OF CONCILIATORS

"Article 3

"There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

"CHAPTER IV

"APPOINTMENT OF CONCILIATORS

"Article 4

"If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as chairman of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

"Article 5

"1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as chairman, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

"2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as chairman.

"3. If at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the

parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as chairman, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as chairman.

"4. If, at the end of the three-month period referred to in paragraph 2 of this article the parties have appointed three conciliators but have not been able to agree which of them shall act as chairman, the chairman shall be chosen in the manner described in that paragraph.

"Article 6

"The vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

"CHAPTER V

"FUNDAMENTAL PRINCIPLES

"Article 7

"The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. To that end, it shall attempt to clarify the issues in dispute and to help the parties reach an agreement. It shall seek to obtain all information necessary or useful for the attainment of those objectives. If no settlement is reached during consideration of the dispute, the commission shall draw up and communicate to the parties, through a report of its chairman, such terms of settlement as it deems appropriate.

"Article 8

"The commission shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the facts and circumstances of the case.

"CHAPTER VI

"PROCEDURES AND POWERS OF THE COMMISSION

"Article 9

"While adhering to the procedural provisions of these rules, the commission shall adopt its own procedures.

"Article 10

"1. Before the commission begins its work, the parties shall designate the representatives and shall communicate the names of such representatives to the chairman of the commission. The chairman shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the representatives shall be convoked.

"2. The representatives of the parties may be assisted by counsel and experts appointed by the parties.

"3. Before the first meeting of the commission, its members may meet informally to deal with administrative and procedural matters.

"Article 11

"1. At its first meeting, the commission shall appoint a secretary and shall then hear initial statements from the parties. If it decides that the information provided by the parties so permits, the commission shall agree on the method to be used to consider the dispute and, in particular, whether the parties should be invited to submit written statements and in what order and within what time-limits such statements must be submitted, as well as the dates when, if this is required, representatives and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

"2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any of them. He may be a United Nations official if the parties so wish and if they agree with the Secretary-General of the Organization on the conditions under which that official will exercise his functions.

"3. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the representative or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

"Article 12

"1. The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall do everything possible to provide it with whatever documents and information may be relevant.

"2. The commission may ask the parties for whatever explanations it deems necessary or useful. It may also make comments on the arguments submitted or the statements made by the parties.

"3. The commission shall accept any request by a party that persons whose testimony it considers necessary or useful be heard, that experts be consulted or that local investigations be conducted. It may, however, in any case in which it considers it neither necessary nor useful to accept such a request, ask the party making the request to reconsider it.

"4. The parties shall use the means available to them to enable the commission to enter their territory and, in accordance with their laws, to convoke and hear witnesses or experts and visit any part of their territory to conduct local investigations.

"Article 13

"If the commission ascertains that the parties disagree on issues of fact, it may, motu proprio, consult experts, conduct local investigations or question witnesses. It may also, with the consent of both parties, collect evidence to clarify facts which the parties have not taken into account. Article 12, paragraph 4, shall apply to any investigation made in accordance with this article.

"Article 14

"The commission may propose to the parties that they jointly appoint expert advisers to assist them in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

"Article 15

"1. Any of the parties may provide the commission with written comments on situations or facts relating to the dispute and on arguments submitted by the other party, on the understanding that the origin of the comments shall not be revealed to the latter.

"2. Comments submitted in accordance with this article shall not have any evidentiary effect if they affirm or refute facts.

"Article 16

"Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party.

"Article 17

"At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention of the parties to any measures which might be advisable or which might facilitate a settlement.

"Article 18

"The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take decisions by a majority of votes of its members. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

"Article 19

"The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative and procedural aspects of its work.

"CHAPTER VII

"CONCLUSION OF THE CONCILIATION PROCEEDINGS

"Article 20

"1. On concluding its consideration of the dispute, the commission shall, if full settlement has not been reached, define the terms of settlement which are likely to be acceptable to the parties. To that end, it may hold an exchange of views with the representatives of the parties, who may be heard jointly or separately.

"2. The terms of settlement adopted by the commission shall be set forth in a report communicated by the chairman of the commission to the representatives of the parties, with a request that the representatives inform the commission, within a given period, whether the parties accept them. The chairman shall include in the report the reasons which, in the commission's view, might prompt the parties to accept the proposed terms of settlement. The commission shall endeavour not to present in its report any final conclusions with regard to facts or to rule formally on issues of law, unless the parties have jointly asked it to do so.

"3. If the parties accept the terms of settlement proposed by the commission, a document shall be drawn up setting forth the conditions of acceptance. The document shall be signed by the chairman and the secretary. A copy signed by the secretary shall be provided to each party, and this shall conclude the proceedings.

"Article 21

"The terms of settlement proposed shall be simply recommendations submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties nevertheless undertake to study them carefully and objectively. If one of the parties rejects terms of settlement which the other party accepts, it shall inform the latter, in writing, of the reasons why it could not accept them.

"Article 22

"1. If the terms of settlement are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a document signed by the chairman and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the document signed by the secretary.

"2. If the terms of settlement are not accepted by both parties but the latter wish efforts to reach agreement on different terms to continue, the

proceedings shall be resumed, and all the provisions used thus far in the proceedings shall apply, except that it shall not be necessary to appoint a new secretary. Article 24 shall apply to the resumed proceedings, with the relevant time-limit running from the commission's first meeting after resumption of the proceedings.

"Article 23

"Upon conclusion of the proceedings, the chairman of the commission shall deliver the documents in the possession of the secretariat of the commission to the Secretary-General of the United Nations who, subject to the possible application of article 28, paragraph 2, shall preserve their secrecy.

"Article 24

"Except where the parties or the commission with the consent of the parties grant an extension, the commission shall conclude its work within ..... from the date of its first meeting.

"Article 25

"If the commission finds one or both of the parties to be refraining from extending in good faith the cooperation necessary for the satisfactory progress of the conciliation proceedings, it may terminate the proceedings without proposing terms of settlement. If the commission makes use of this power, it shall communicate to the parties in writing, in a thorough and precise manner, the reasons why this step has been taken.

"CHAPTER VIII

"SECRECY OF THE COMMISSION'S WORK AND DOCUMENTS

"Article 26

"1. The commission's meetings shall be closed. Its members and expert advisers, the representatives and counsel of the parties, and the secretary and secretariat staff, shall refrain from divulging any documents or statements, or any communication concerning the progress of the proceedings, without the prior approval of both representatives.

"2. If any indiscretion occurs during the proceedings, the commission may determine its possible effect on the continuation of such proceedings.

"Article 27

"1. Each party shall receive, through the secretary, certified copies of the minutes of the meetings at which it was represented.

"2. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

"Article 28

"1. Except with regard to the certified copies referred to in article 27, paragraph 2, the obligation to respect the secrecy of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to terms of settlement and proposals which were not accepted.

"2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents or authorize the publication of all or some of them.

"3. It is understood that the terms of settlement accepted by the parties are subject to the registration obligation laid down in Article 102 of the Charter of the United Nations.

"CHAPTER IX

"PROHIBITION OF ACTS WHICH MIGHT HAVE AN ADVERSE EFFECT ON THE CONCILIATION PROCEEDINGS

"Article 29

"1. Except where necessary for preserving its rights, neither of the parties shall initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of the dispute which is the subject of the conciliation proceedings.

"2. The parties shall refrain from any measures which might have an adverse effect on the terms of settlement proposed by the commission, until those terms have been explicitly rejected by both or one of the parties and the period established in accordance with article 20, paragraph 2, has expired. The parties shall also, in general, refrain from any measure which might aggravate or exacerbate the dispute.

"CHAPTER X

"PRESERVATION OF THE LEGAL POSITION OF THE PARTIES

"Article 30

"Except as the parties shall otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted or the report of the commission, the terms of settlement approved by the commission or any proposal made by the commission without the acceptance of both parties.

"CHAPTER XI

"COSTS

"Article 31

"The costs of the conciliation proceedings, including those occasioned by any investigations which the commission decided to conduct motu proprio and the emoluments of expert advisers appointed in accordance with article 14, shall be borne by the parties in equal shares."

123. The text of the proposed draft resolution read as follows:

"UNITED NATIONS RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

"The General Assembly,

"Recognizing the value of conciliation as a method of amicably settling disputes arising in the context of relations between States,

"Convinced that the establishment of international rules of conciliation incorporating the results of the most recent scientific studies and experience in the field of international conciliation, together with certain innovations which should be made in the traditional practice in this field, could contribute to the development of harmonious relations between States,

"1. Recommends the application of the United Nations Rules for the Conciliation of Disputes between States, the text of which is contained in the annex to the present resolution, in any case where a dispute arises between States which it has not been possible to settle by direct negotiations and which the parties wish to settle by purely amicable means;

"2. Requests the Secretary-General to take appropriate measures to circulate to all Governments the text of the present resolution, together with those rules."

124. The Working Group devoted eight meetings, held between 1 and 5 March 1993, to the consideration of the proposed draft articles, first by an exchange of views on the text as a whole, followed by consideration of the proposal article-by-article.

A. General comments on the proposal

125. In their general comments, the delegations commended the Government of Guatemala for the improvements in the revised draft, which took into account the majority of comments made during the last session of the Special Committee. It was emphasized that the main merit of the proposed rules was that they were based on the consent of the parties to a dispute, and that States parties to a dispute were free to use them or to amend them, as appropriate. It was generally recognized that the revised proposal of Guatemala was more flexible and concise. Thus, it was a valuable document which provided a useful basis for the discussion in the Committee on conciliation rules, aimed at contributing to the further development of mechanisms of prevention and peaceful settlement of disputes between States, but that there was room for further improvement to make it even more flexible and less complicated.

126. Among the major issues raised during the general comments on the proposal was whether it was necessary to link the proposed rules to the existing mechanisms for the prevention and peaceful settlement of disputes by the organs of the United Nations. A question was raised again as to whether there was a need to add a new text of global scope to the numerous existing instruments concerning conciliation. On the other hand, some delegations viewed the development of such rules as useful. It was observed that such conciliation rules could indeed become effective tools at the disposal of States which may use them for settling disputes at the regional or global level. There was also the suggestion that these conciliation rules could also be used in the settlement of internal disputes with the consent of the States concerned. It was suggested that the proposed rules should serve as model rules, which take into account relevant practices and provisions of international instruments, including those adopted by the United Nations. The view was expressed that these rules could be developed at a later stage into a convention on conciliation procedures or into another international legal instrument on the peaceful settlement of disputes. Another view favoured the formulation of a more elaborate and politically oriented General Assembly resolution, accompanied by technical rules, which would incorporate provisions encouraging States to resort to conciliation, and would contain a reference to existing conciliation procedures, taking full account of them. It was also emphasized that the willingness of States parties to a dispute to settle it through peaceful means such as conciliation was the core of the success of such a procedure.

B. Consideration of the proposal, article-by-article

Chapter I. "Application of the rules", article 1

127. It was observed that the article should be redrafted so as to emphasize that the rules only applied when parties to a dispute had agreed to use them. The suggestion was also made that the phrase "through the diplomatic channel" should be either deleted or replaced by the phrase "other methods of peaceful settlement of disputes". The view was also expressed that paragraph 2 should be retained without change.

Chapter II. "Initiation of the conciliation proceedings", article 2

128. It was generally observed that the article was too detailed and that it needed further clarification and simplification. But there was also the view suggesting the retention of the article as currently drafted. Specific proposals were also suggested for amending paragraph 1 of the article. One suggestion called for the deletion of the requirement of "written" invitations; another suggested changing the word "shall" to "may" in the second sentence; while another suggestion was to redraft the entire paragraph as follows: "The party wishing to initiate the conciliation proceedings should send the other State the invitation to this effect." There was also a suggestion to redraft the paragraph in such a way as to promote the possibility of simultaneous initiation of conciliation by parties to a dispute.

129. With respect to paragraph 2 of the article, there was a suggestion to delete or clarify it. But there was also the view that the article was acceptable as currently drafted. On the question of an invitation to conciliation proceedings, the suggestion was made that the phrase "if the terms of the proceedings have been otherwise agreed" be substituted for the phrase "if it is not accepted, after the States have agreed to apply an amended version of these rules".

130. With respect to paragraph 3, the views ranged from those calling for the deletion or the redrafting of the article, so as to avoid placing an additional burden on the Secretary-General of the United Nations, to those suggesting that assistance by the Permanent Court of Arbitration or by another, third, party would also be envisaged. The view was also expressed that paragraph 3 should be retained without change.

Chapter III. "Number of conciliators", article 3

131. There was the view that the article should not indicate a specific number of conciliators in a way that ruled out the possibility of a sole conciliator. The suggestion was made that the choice of the number of conciliators should, in fact, be left for an agreement of the parties concerned. However, there was also the view supporting the specific enumeration of conciliators as reflected in the present article.

Chapter IV. "Appointment of conciliators", articles 4 to 6

132. With respect to the question of the appointment of the third conciliator, the view was expressed that the reference to appointment by the Government of the third State be deleted. It was also suggested that, as an alternative to the President of the International Court of Justice and his alternates, such appointment could also be made by the Secretary-General of the United Nations. There were also suggestions to delete the provision referring to the habitual residence of a conciliator or to substitute for it a provision stressing that the conciliator should be an independent individual in whom the States may place their trust. The point was made that a time-limit should be established for the appointment of the conciliators. On the question of the qualifications of conciliators, there was the view that the relevant provisions of General Assembly decision 44/415 of 4 December 1989 and of the recent Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe be used as guidelines. However, there was also the view that the question of the qualifications of conciliators need not be addressed in the rules.

133. With respect to articles 4 and 5, it was suggested that a provision on a procedure for more than two parties to a dispute be envisaged and that the number of conciliators in such cases should be more than the number of the parties to the dispute.

134. As to article 6, the view was expressed that a time-limit should be established within which the vacancies in the commission are to be filled. A one-month time-limit was suggested.

Chapter V. "Fundamental principles", articles 7 and 8

135. With respect to articles 7 and 8 under the above heading, it was generally observed that "Objectives of conciliation" or "The role of a conciliation commission" would have been more appropriate headings than "Fundamental principles". The suggestion was also made that the phrase "in accordance with the Charter of the United Nations" be added at the end of the first sentence of article 7, and that the article should refer also to "principles of international law". With respect to article 8, there was a suggestion to delete it or to replace it by a provision which called for the commission to take into account international law and equity or "principles of international law".

Chapter VI. "Procedures and powers of the commission", articles 9 to 19

136. As to article 9, a suggestion was made to delete the introductory phrase and reformulate the remaining part to read: "The commission shall adopt its own procedures after consulting with the parties."

137. With respect to article 10, it was pointed out that the phrase "the representatives" should be changed to "their representatives" in the first line of the first sentence. There was also the suggestion that paragraph 3 of the article be deleted.

138. As to article 11, certain delegations commented that provisions relating to the appointment of a secretary of the commission and to the hearing of initial statements of the parties to a dispute be made more flexible. It was also suggested that the phrase "At its first meeting", which appears at the beginning of the first sentence of the article, be deleted and that the word "shall" in the same sentence be changed to "may".

139. With respect to article 12, it was suggested that its paragraph 2 should stipulate that the commission may ask the parties not only for explanations as therein provided, but also for relevant documents and information. With respect to paragraph 3, it was suggested that the phrase "The commission shall accept", at the beginning of the first sentence, be changed to "The commission may accept". There was also the view that, in paragraph 4, a new sentence should be added to provide for functional privileges and immunities for the members of the commission.

140. As to article 13, a suggestion was made to delete the second sentence, which provides for the right of the commission, with the consent of both parties, to collect evidence to clarify facts which the parties have not taken into account.

141. With respect to article 14, there was a suggestion to delete it, or to deal with its subject-matter under article 10, which deals with the questions of the appointment of the representatives of the parties to the commission.

142. As to article 15, there were suggestions to delete the whole article; to delete only the second phrase of paragraph 1, referring to the issue of confidentiality; to add "in connection with arguments" after "written comments" in the first line; and to delete paragraph 2.

143. Regarding article 16, there was a suggestion calling for the deletion of the second sentence, or redrafting it to read: "Any proposal may, with the agreement of the party making the proposal, be communicated to the other party". However, there was also support for the retention of the second sentence as currently drafted.

144. With respect to article 17, there was a suggestion to delete it or to redraft it so as to avoid reference to the phrase "any measures which might be advisable". However, there was also the view that the article should be retained as currently drafted.

145. As for article 18, the suggestion was made that it should be redrafted so as to avoid reference to decision by unanimity and simply provide for decision of the commission by a majority of votes cast. The deletion of the last sentence of the article was also suggested.

146. With respect to article 19, it was pointed out that its provisions link these draft rules to the Secretariat of the United Nations. Doubts were expressed concerning the need for such a link. The Secretariat was asked to clarify whether this type of advice or assistance referred to in the article could, in fact, be provided by the Secretary-General of the United Nations. There was also the view that the article should be deleted.

Chapter VII. "Conclusion of the conciliation proceedings", articles 20 to 25

147. Several comments were made to improve paragraph 1 of article 20. It was suggested that the paragraph should also deal with situations where the parties themselves, in the course of the conciliation procedure, reached a settlement. It was pointed out that the commission should not be required to suggest to the parties terms of settlement which are likely to be accepted by them, as provided in the article. There was also a suggestion to avoid the reference to "full settlement" in the paragraph. There appeared to be difficulties with respect to the second and third sentences of the paragraph, and the suggestion was made to delete them and replace them by a provision reading as follows: "If a settlement is reached during the proceedings with the help of the commission, it should be recorded in the summary signed by the commission."

148. With respect to article 21, there was a suggestion to delete the word "simply" in the first line of the first sentence. The appropriateness of requiring the parties to study carefully and objectively the recommendations of the commission, as provided in the second sentence, was questioned. Objections were also voiced concerning the requirement that a party which has rejected the terms of settlement should inform the other party of the reasons for the rejection.

149. With respect to article 22, the suggestion was made to emphasize that non-acceptance by the parties of the terms proposed by the commission does not absolve them from the obligation to continue to settle the dispute by peaceful means and in good faith, and that such a provision may be expressed in a separate paragraph of the article. It was observed with respect to paragraph 2 that its last sentence should be redrafted so as to enable the parties, in case of the resumed conciliation proceedings, to establish a new time-limit. Therefore the suggestion was made to delete from it the reference to article 24. Another suggestion was made to make the provisions of the first sentence of paragraph 2 more flexible by indicating that, in case of the resumed proceedings, the previous procedures will apply, unless the parties agree otherwise.

150. As to article 23, there was the suggestion that it be deleted, or be redrafted as follows: "Upon conclusion of the proceedings, the chairman of the commission shall return the documents in its possession to the parties or shall destroy such documents, as appropriate, taking care to avoid jeopardizing the secrecy of such proceedings." Thus, the idea of depositing such documents with the Secretary-General of the United Nations was rejected. However, a suggestion was made to deposit with him only the results of successful work of the commission.

151. As to article 24, suggestions were made either to fill the post for a fixed-term period, for which six months was suggested, or to envisage that the parties should establish a time-limit in advance, or if the parties were unable to do so in advance, the commission should establish such a time-limit. But there was also the view that the article should not focus upon technical details, such as time-limits for the conclusion of the commission's work, but

should rather emphasize the need for the conciliation commission to achieve positive results. Another suggestion was to delete the article as a whole.

152. Regarding article 25, it was suggested that it be retained as currently drafted, or be deleted. There was also a suggestion to deal with the issue of termination of the conciliation proceedings in article 24. A suggestion was also made that the article should be redrafted to create an obligation upon the parties to assist the commission in its work.

Chapter VIII. "Secrecy of the commission's work and documents", articles 26 to 28

153. There was a general comment on the title of chapter VIII, suggesting that "secrecy" be changed to "confidentiality". As to article 26, the suggestion was made that its paragraph 1 be redrafted in more general terms by adding at the end of its first sentence a phrase emphasizing that the proceedings should be confidential. With respect to paragraph 2, the suggestion was made to delete it or to redraft it as follows: "The commission may consider what steps would be appropriate, if any indiscretion occurs during the proceedings." But there was also the view that the paragraph should be retained as currently drafted. The main idea of the paragraph is to allow the parties the possibility of termination of the conciliation proceedings if any indiscretion has occurred.

154. With respect to article 27, it was observed that the text should contain fewer technical details and that the wording should be modified. Thus, suggestions were made to delete, in both paragraphs of the article, the word "certified", when referring to copies of the minutes of the meetings and other documents and materials relating to the work of the commission. It was also suggested that, in paragraph 1 of the article, the expression "the minutes of the meetings" should be changed to "any minutes of the meetings", and that the phrase "at which it was represented", referring to the meetings of the parties, be deleted.

155. As to article 28, doubts were expressed concerning its paragraph 1, which referred to "the certified copies" mentioned in article 27. There were views calling for the deletion of that reference and those suggesting its retention. With respect to paragraph 2 of the article, a suggestion was made to delete in its second line the phrase "and by mutual agreement", referring to a disclosure by the parties of the documents relating to the proceedings. As to paragraph 3, there was a suggestion calling for its deletion, while another called for its retention as currently drafted. However, a proposal was also made that the word "are" be changed to "may be", in the first line of the paragraph.

Chapter IX. "Prohibition of acts which might have an adverse effect on the conciliation proceedings", article 29

156. The views expressed concerning paragraph 1 of article 29 ranged from those calling for its deletion to those supporting its retention as currently formulated. But there were also views suggesting that the paragraph needed to be clarified. A suggestion was made that, in the second line, after the word "shall", the word "unilaterally" should be added. It was also suggested that, in the second line, words such as "unilaterally", or "in principle" should be inserted between "shall" and "initiate". It was also suggested that paragraph 1 be redrafted, paying attention to the need to maintain a certain sequence in the application of various means of settlement, without establishing a hierarchy with respect to the means in question. Regarding paragraph 2, the suggestion

was made to focus upon its core idea, namely, the obligation to refrain from impeding the ongoing conciliation proceedings by redrafting article 29 in a single, concise sentence as follows: "The parties shall refrain from any measure which might impede the work of the commission." Although some expressed doubts about the above proposal in the light of relevant provisions in the Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe, others generally accepted it and suggested that it could be further improved. Thus, a suggestion was made that the expression "unless otherwise agreed" be added at the end of the text of the proposal. Another suggestion called for adding to the proposal a provision stressing that the parties should refrain from any measure, including the use of other means of settlement, which might impede the work of the commission. The suggestion was also made to add to the text the following sentence: "If the parties agree to judicial or arbitral proceedings, the conciliation should stop."

Chapter X. "Preservation of the legal position of the parties", article 30

157. With respect to article 30, the view was expressed that it needed clarification, taking into consideration that not all of the principles included in it might be applicable to these conciliation rules. There was also the view that the last clause at the end of the article referring to the acceptance of the terms of settlement by "both parties" should be deleted.

Chapter XI. "Costs", article 31

158. As to article 31, an observation was made that the French text omitted reference to "motu proprio", which was in the English text of the article. There was the suggestion that the text of the article should be redrafted in a short sentence, as follows: "The costs of the conciliation proceedings shall be borne by the parties in equal shares." Another suggestion called for an addition at the end of the above proposal of the following phrase: "unless otherwise decided by the commission". Moreover, there was a suggestion to add to the text a phrase stipulating that each party should bear its share of the expenses of the proceedings.

159. At the 18th meeting of the Working Group of the Special Committee on 16 March 1993, the Secretary of the Committee, in response to the question regarding the provisions of a number of articles, made a statement on behalf of the Legal Counsel which read as follows:

> "I have been requested to give my advice on a number of provisions of the draft 'United Nations rules for the conciliation of disputes between States', contained in document A/AC.182/L.75, which refer to the Secretary-General and/or the Secretariat of the United Nations.
>
> "I begin with the issue raised in article 2, paragraph 3.
>
> "1. Article 2, paragraph 3, provides that, if the States cannot reach agreement on the definition of the dispute, they may jointly request the assistance of the Secretary-General to resolve the difficulty. It further provides that the parties may request the assistance of the Secretary-General on any other difficulty they may have in reaching an agreement on the terms of the conciliation proceedings.

"In regard to this article, I should like to refer delegations to the statement I made at the 1992 session of the Special Committee, which is reproduced in paragraph 137 of its report. 6/ I said then, among other things,

> 'that, under the Charter, the Secretary-General is not in a position to give advice of a general nature to individual Member States. The advice and assistance he may render, as chief administrative officer of the Organization, is normally limited to procedural and institutional questions and matters pertaining to the functioning of the United Nations. However, Article 98 of the Charter provides that the Secretary-General shall also perform such functions as are entrusted to him by the principal organs of the United Nations. Consequently, a resolution of the General Assembly which would eventually approve or endorse the rules should clearly authorize the Secretary-General to provide the kind of assistance and advice mentioned in the provisions under consideration.'

"Article 2, paragraph 3, envisages the case of a joint request by the parties to the dispute for the assistance of the Secretary-General. Due to this consensual element, the request may be assimilated to a request for the provision of good offices submitted by the parties to a dispute, which would fall within the powers of the Secretary-General under the Charter and would not compromise the neutrality of the Secretariat. It should be stressed, however, that it would be up to the Secretary-General to determine, in each case, the extent to which he can provide his assistance.

"I now turn to Article 11.

"2. Article 11, paragraph 2, of the draft conciliation rules envisages the possibility that the secretary of the conciliation commission [may] be a United Nations official. On this, I would like to state the following:

"It is not the practice for a United Nations official to serve as a secretary of a conciliation commission established by States parties to a dispute. However, if it appears that the success of the conciliation process hinges on the appointment of a staff member of the United Nations as the secretary, then the United Nations may attempt to accommodate such a request, provided that it emanates from all the parties to the dispute. However, I should like to stress again that it would be up to the Secretary-General to determine, in each case, whether he can accede to such a request.

"I turn next to Article 19.

"3. Article 19 of the draft conciliation rules stipulates that the commission may ask the Secretary-General for advice or assistance with regard to the administrative and procedural aspects of its work.

"In this respect, I should like to note that the Secretary-General would, again, determine in each case whether he can provide such assistance, so that the position of absolute neutrality which he must maintain vis-à-vis Member States would not be compromised.

"Now I come to article 23.

"4. Article 23 of the draft rules provides that, upon conclusion of the proceedings, the chairman of the commission shall deliver the documents in

possession of the secretariat of the commission to the Secretary-General of the United Nations, who shall preserve their secrecy.

"With respect to this, I should like to point out that there exists no such practice whereby documents concerning a dispute settlement process, conducted outside the framework of the United Nations, were delivered to the Secretary-General for safe keeping.

"5. Finally, article 28, paragraph 3, of the draft rules provides that the terms of settlement accepted by the parties are subject to the registration obligation laid down in Article 102 of the Charter.

"I should like to make the following comment with respect to this provision. The terms of settlement elaborated by conciliation commissions and accepted by the parties do not usually constitute a treaty or an international agreement within the meaning of Article 102 of the Charter. Consequently, there is no obligation to register such terms of settlement with the Secretariat, unless they are later finalized by the parties in the form of a treaty. Practice also indicates that terms of settlement resulting from conciliation procedures have never been registered with the Secretariat.

"In conclusion, I should like to note again, as I did last year, that the provision of assistance by the Secretary-General, as envisaged in the draft conciliation rules, might have financial implications which would require appropriate action by the General Assembly. Indeed, such assistance may involve the hiring of consultants or the establishment of new posts. Thus, should the Special Committee wish to recommend to the General Assembly the adoption of provisions regarding Secretariat assistance, the requisite statement of programme budget implications would have to be submitted to the Special Committee by the Secretary-General."

V. COMMUNICATION ADDRESSED TO THE CHAIRMAN ON ISSUES BEARING UPON THE WORK OF THE COMMITTEE

Statement of the Rapporteur

United Nations Decade of International Law

160. At the 180th meeting of the Special Committee, the Chairman informed the Committee of the letter dated 2 March 1993 from Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, drawing the attention of the Chairman to General Assembly resolution 47/32 of 25 November 1992, and to certain paragraphs of the programme of activities to be commenced during the second term (1993-1994) of the United Nations Decade of International Law which related to the mandate of the Special Committee.

161. The Chairman informed the Committee of his intention to respond to the letter by pointing out that the Committee had already made a concrete contribution to the United Nations Decade of International Law when it approved the draft Handbook on the Peaceful Settlement of Disputes between States 7/ and the draft "Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security" (General Assembly resolution 46/59 of 9 December 1991, annex). The Committee hoped to make further contributions to the programme of the Decade through the discussions of the topics within its current mandate.

Notes

1/ For the list of members of the Committee at its 1993 session, see A/AC.182/INF/18.

2/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

3/ On 11 March 1993, the Chairman held informal consultations with representatives of the intergovernmental organizations invited to participate in the plenary meetings of the Special Committee on the Question of Cooperation between the United Nations and Regional Organizations in the Maintenance of International Peace and Security (see A/AC.182/1993/CRP.3, para. 9). During the consultations, the Chairman briefed the representatives on the progress of work within the Working Group on the subject.

4/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 33 (A/47/33).

5/ When introducing working paper A/AC.182/L.77, the representative of India mentioned that it had been submitted by both India and Nepal.

6/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 33 (A/47/33), para. 137.

7/ United Nations publication, Sales No. E.92.V.7.

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